CONSTITUTIONAL PATHOLOGIES AND POPULAR SOVEREIGNTY

Bangladesh's Journey from the 1972 Founding to the July Charter

S M NAZMUZ SAKIB

FIRST EDITION • 2026

Constitutional Pathologies and Popular Sovereignty: Bangladesh's Journey from the 1972 Founding to the July Charter

By

S M Nazmuz Sakib

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Dedication
This textbook is dedicated to the students, activists, and martyrs of the July 2024 uprising, whose courage and sacrifice created Bangladesh's most significant constitutional moment since independence.

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Preface

Every constitution is a promise. It is a promise written in the language of law but spoken in the voice of hope. It says to the people who live under its authority that power will be restrained, that rights will be protected, that justice will be pursued, and that the coercive machinery of the state will be turned against them only when the law clearly permits and never when the law forbids. This is a remarkable promise. It is remarkable because history offers so many examples of constitutions that failed to deliver on their promises, of documents that were drafted with the noblest aspirations and then ignored, subverted, or rewritten by those who held power. And yet the promise endures. It endures because people continue to believe that words inscribed on paper can reshape the destiny of nations, that legal rules can constrain the powerful, and that democratic procedures can give ordinary citizens genuine control over the forces that govern their lives.

The Constitution of Bangladesh is among the most remarkable constitutional documents of the post colonial world. It was born from the fire of a liberation war in which millions of people sacrificed their lives for the right to govern themselves. It was nourished by the blood of martyrs who believed that independence meant not merely the end of Pakistani rule but the beginning of a new kind of political community, one in which power would be accountable, rights would be enforceable, and the dignity of every citizen would be constitutionally guaranteed. It was written with the passionate idealism of a newly sovereign nation that believed, with the sincerity that only the newly free can possess, that the horrors of 1971 could be forever prevented by the careful drafting of legal provisions and the establishment of democratic institutions.

That belief was tested almost immediately. Within three years of its adoption, the constitution was gutted by executive fiat. Within a decade, it had been amended and reamended, stretched and compressed, by governments that wore its text as a costume while pursuing power at every cost. The constitution that had declared socialism and secularism as foundational values would soon declare Islam as the state religion. The parliamentary system it established would be abolished and replaced with presidential rule, then restored again. Martial law, which the constitution nowhere sanctioned or contemplated, would be retrospectively laundered through constitutional amendments. The very articles designed to protect the document from alteration would be amended out of existence, only to be brought back in new forms. The story of the Bangladesh Constitution is, in many ways, the story of constitutional law itself: a perpetual negotiation between the ideal and the real, between the solemn promise of the text and the raw hunger of political power.

This textbook is an attempt to examine that story with the full seriousness it deserves. It is written for law students who are beginning to grapple with constitutional principles, for practitioners who need to situate individual legal questions within broader historical and philosophical contexts, for scholars of comparative constitutional law who seek a detailed account of one of South Asia's most complex constitutional experiments, and for engaged citizens who believe that understanding the constitution is itself an act of democratic participation. The analysis presented in this work draws on the tools of multiple disciplines: legal philosophy, political theory, comparative constitutional law, historical investigation, sociological jurisprudence, and the emerging field of democratic transition studies.

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The twelve parts of this textbook build on one another to create a comprehensive picture of Bangladesh's constitutional order. The first part excavates the philosophical and historical bedrock on which the constitution was built, examining the theories of constitutionalism that informed the document's drafters and tracing the political and intellectual history that shaped the text. The second part descends into the most intimate and morally urgent terrain of constitutional law: the fundamental rights of the individual human being against the state. Here the analysis shows that while the constitution's rights provisions are admirably comprehensive on paper, they have proven systematically incapable of delivering on their promises, bending under political pressure, yielding to executive manipulation, and producing a body of constitutional rights law that has served the interests of the powerful more reliably than the interests of the vulnerable.

The third part turns to the structural heart of the constitutional system: the design and operation of the legislative branch, the relationship between parliament and the executive, and the constitutional provisions governing the prime minister's exercise of power. The analysis reveals that the concentration of virtually unchecked power in the office of the prime minister is not merely a political problem but a constitutional pathology of the deepest kind, one that has transformed a parliamentary democracy founded on the principle of governmental accountability into what scholars have variously described as a prime ministerial dictatorship and an elective autocracy. The fourth part examines the judiciary, tracing the gap between the constitution's textual commitment to judicial independence and the actual institutional reality of Bangladesh's courts, a gap so wide and so persistent that understanding it is indispensable to understanding why the constitutional order failed so catastrophically under successive governments.

The fifth part analyzes the foundational principles of state policy, examining how nationalism, socialism, democracy, and secularism have been contested, revised, removed, partially restored, and again placed under fundamental reconsideration through a sequence of constitutional amendments that spans the entire history of Bangladesh's constitutional existence. The sixth part examines the electoral system, demonstrating that when elections are corrupted, manipulated, or captured by incumbents who use the machinery of the state to guarantee their own continuation in power, the constitutional order loses its deepest claim to obedience, and the seeds of crisis and rupture are planted in the political soil.

The seventh part addresses emergency powers and crisis governance, tracing the constitutional history of Bangladesh from the original document's deliberate omission of any emergency provisions through the repeated invocation of martial law to the sophisticated securitization of law that developed under the Awami League's later years. The eighth part examines local government and constitutional decentralization, showing that the constitution's clear and explicit commitment to local governance as an instrument of participatory democracy has been systematically undermined by every successive government regardless of party or ideology. The ninth part analyzes the architecture of constitutional accountability, including the Anti Corruption Commission, the Election Commission, the Human Rights Commission, the Public Service Commission, the Comptroller and Auditor General, and the proposed National Constitutional Council.

The tenth part confronts the theory and practice of constitutional amendment, examining the seventeen amendments to the constitution, the basic structure doctrine in its Bangladeshi form, the extraordinary Article 7B eternal clause inserted by the Fifteenth Amendment, and the

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constitutional crisis that erupted when the newly elected parliament refused to convene the Constitution Reform Council mandated by the February 2026 referendum. The eleventh part examines Bangladesh's relationship with international law, including its treaty obligations under the major human rights instruments, the extraordinary jurisdictional story of the International Criminal Court's investigation into the Rohingya crisis, the International Crimes Tribunals and their compliance with international fair trial standards, and the constitutional reform proposals for bridging the implementation gap between international commitment and domestic reality.

The twelfth and final part undertakes the most difficult task of all: assessing Bangladesh's constitutional situation as it stands in the immediate aftermath of the February 2026 elections and referendum, examining the theoretical frameworks that can help us understand what has happened and what may happen next, and offering a considered analysis of the conditions under which Bangladesh's long constitutional struggle might at last produce a republic worthy of the aspirations of the people who founded it and of the students and citizens who risked and sacrificed their lives in the uprising of July and August 2024.

This textbook has been written in the conviction that careful, critical analysis of constitutional experience, however painful that experience may be, is itself a form of constitutional commitment. To take Bangladesh's constitutional history seriously, to examine its failures honestly, to understand the structural conditions that produced those failures, and to assess the prospects for genuine reform with neither naive optimism nor premature despair, is to treat the people of Bangladesh and their constitutional struggle with the respect they deserve.

Constitutional democracy is not merely a set of institutional arrangements that powerful states impose on weaker ones or that ruling elites use to legitimate their dominance. It is, at its best, a genuine human achievement: a way of organizing political life that allows people to live together under common rules while protecting the equal dignity and rights of every member of the community. That achievement is fragile, incomplete, and perpetually contested. But it is real, and the aspiration to it, as expressed in Bangladesh's July uprising and in the long history of democratic mobilization that preceded it, is one of the most powerful and durable forces in human political life.

The constitutional future of Bangladesh is, at the time of this writing in April 2026, genuinely uncertain. The reform process is incomplete, the political commitment of the governing party to its constitutional obligations is in question, and the structural conditions that have produced constitutional failure in the past have not been fundamentally transformed. But the people of Bangladesh have demonstrated, with unmistakable clarity, that they will not permanently accept constitutional betrayal. That demonstration is itself the most important constitutional resource Bangladesh possesses, and it is the foundation on which, with sufficient institutional wisdom, political courage, and sustained democratic commitment, a genuinely constitutional republic can eventually be built.

S M Nazmuz Sakib
April 2026

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PART ONE

THE CONSTITUTIONAL SOUL OF BANGLADESH: ORIGINS, PHILOSOPHY, LEGITIMACY, AND THE ANATOMY OF A GOVERNING DOCUMENT IN PERPETUAL CRISIS

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PREFACE TO PART ONE

Every constitution tells a story. It is not merely a dry legal instrument of articles, clauses, and schedules. It is, in its deepest essence, a philosophical manifesto, a political compact, a moral declaration, and a structural blueprint all at once. It breathes with the aspirations of the people who demanded it, and it shudders under the weight of the political forces that sought to bend, break, or betray it. The Constitution of the People's Republic of Bangladesh, adopted on November 4, 1972, and brought into force on December 16 of that same year, is among the most remarkable constitutional documents of the post-colonial world. It was born from the fire of a liberation war, nourished by the blood of millions of martyrs, and written with the idealism of a newly sovereign nation that believed, with the passionate sincerity of the newly free, that words inscribed on paper could reshape the destiny of a people.

That belief was tested almost immediately. Within three years of its adoption, the constitution was gutted by executive fiat. Within a decade, it had been amended and re-amended, stretched and compressed, by governments that wore its text as a costume while pursuing power at every cost. The constitution that had declared socialism and secularism as foundational values would soon declare Islam as the state religion. The parliamentary system it established would be abolished and replaced with presidential rule, then restored again. Martial law, which the constitution nowhere sanctioned or contemplated, would be retrospectively laundered through constitutional amendments. The very articles designed to protect the document from alteration would be amended out of existence, only to be brought back in new forms. The story of the Bangladesh Constitution is, in many ways, the story of constitutional law itself: a perpetual negotiation between the ideal and the real, between the solemn promise of the text and the raw hunger of political power.

This textbook is an attempt to examine that story with the full seriousness it deserves. It is written for law students who are beginning to grapple with constitutional principles, for practitioners who need to situate individual legal questions within broader historical and philosophical contexts, for scholars of comparative constitutional law who seek a detailed account of one of South Asia's most complex constitutional experiments, and for engaged citizens who believe that understanding the constitution is itself an act of democratic participation. The analysis presented in this work draws on the tools of multiple disciplines: legal philosophy, political theory, comparative constitutional law, historical investigation, sociological jurisprudence, and the emerging field of democratic transition studies.

This first part, which forms the foundational layer of the entire textbook, undertakes the task of excavating the philosophical, historical, and jurisprudential bedrock on which the Bangladesh Constitution was built. It examines the theories of constitutionalism that informed the document's drafters, traces the political and intellectual history of constitutional thought that shaped the text, analyzes the structural choices made in 1972 and their long-term consequences, and situates the entire constitutional experiment within the wider landscape of post-colonial constitution-making. It also begins the critical project of evaluating the document against the benchmarks established by jurisprudential theory, asking not merely what the constitution says, but whether what it says can achieve what a constitution must achieve, and whether the reforms proposed in the aftermath

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of the 2024 mass uprising offer a genuine path toward constitutional regeneration or simply repeat the errors of the past in new language.

CHAPTER ONE: CONSTITUTIONALISM AS PHILOSOPHY -- WHAT A CONSTITUTION IS AND WHAT IT MUST DO

1.1 The Ancient Roots of Constitutional Thought

Before one can meaningfully evaluate any specific constitution, one must confront the foundational question: what is constitutionalism? The word itself is deceptively simple. A constitution, in its most elementary sense, is any fundamental arrangement of a polity's governing structure. In this broad usage, even pre-literate societies had constitutions, understood as the customary arrangements by which authority was organized, distributed, and exercised. But modern constitutionalism carries a far richer and more demanding meaning than this elementary definition suggests.

The philosophical roots of modern constitutionalism reach deep into Western political thought, but their relevance is not limited to Western societies. Aristotle, in his Politics, distinguished between correct and deviant constitutions on the basis of whether those who held power ruled for the common good or for their own private interest. This distinction between governance oriented toward the public good and governance oriented toward private benefit remains one of the foundational normative axes of constitutional theory. Aristotle also classified constitutions by the number of rulers involved: monarchy, aristocracy, and polity being the correct forms; tyranny, oligarchy, and democracy being their deviations. What is instructive here is not the specific taxonomy, which is obviously outdated, but the underlying insight: the form of a constitution matters, but the spirit in which it is operated matters even more.

The Roman concept of the res publica, the public thing, introduced the idea that governing authority belonged not to any individual ruler but to the community as a whole. Cicero's formulation in De Re Publica that a state is an association of people united by consent to law and by community of interest prefigures the social contract tradition that would become central to modern constitutional theory. The Roman Senate, the institution of the tribunate, the principle of the rule of law expressed in the Latin maxim lex est rex, the law is king, all contributed to a vocabulary of constitutionalism that later thinkers would draw upon.

Medieval European thought added the important dimension of higher law. The idea that there existed a body of natural or divine law to which human rulers were themselves subject, and which they could not legitimately violate even if they possessed the physical power to do so, is central to the thought of Thomas Aquinas and the broader natural law tradition. This idea of a law above the law, a standard against which the acts of rulers could be measured and found wanting, is a crucial philosophical ancestor of the modern concept of judicial review and the idea of constitutional entrenchment. When Aquinas argued that an unjust law is no law at all, lex iniusta non est lex, he was articulating a principle with profound implications for constitutional

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theory: law derives its authority not merely from the fact that it is enacted by those with the power to enact it, but from its conformity to certain substantive requirements of justice.

The English constitutional tradition contributed the specific mechanisms through which these abstract ideas were translated into legal and political practice. Magna Carta of 1215, while primarily a baronial instrument rather than a democratic document in any modern sense, established the crucial precedent that even the sovereign was bound by law and could not deprive subjects of their rights without lawful judgment. The development of parliamentary government in England over the subsequent centuries demonstrated that constitutional principles could be maintained without a written constitutional document, through a combination of statute, convention, judicial decision, and political practice. The English model, however, also carried the seeds of the doctrine of parliamentary sovereignty, the idea that Parliament could enact any law whatsoever without external legal constraint, a doctrine that stands in considerable tension with the idea of entrenched constitutional rights.

The American and French revolutions of the late eighteenth century marked the decisive moment in the emergence of modern written constitutionalism. Both revolutions were explicitly constitutional projects in the sense that they sought to establish new political orders on the basis of rationally designed fundamental laws. The American Constitution of 1787, and its first ten amendments known as the Bill of Rights, established what became the paradigmatic model of liberal constitutionalism: a written supreme law, entrenchment against ordinary legislative amendment, a federal structure dividing power between national and state governments, separation of powers among executive, legislative, and judicial branches, and judicial review as the mechanism for enforcing constitutional supremacy. The French Declaration of the Rights of Man and Citizen of 1789 added the language of universal natural rights to this constitutional vocabulary.

1.2 The Core Requirements of a Modern Constitution

Modern constitutional theory, drawing on this long history, identifies several core functions that a constitution must perform if it is to be considered constitutionalist in the full sense of that term rather than merely formal or nominal in character. The distinction between a nominal constitution and a living constitution is one of the most important in the entire field of comparative constitutional law.

The first and most fundamental function is the limitation of power. A constitution must establish that governmental authority is not unlimited but is bounded by law. It must create structures of accountability such that those who exercise power can be held responsible for its abuse. It must protect individual rights against encroachment by those who govern. Without this limiting function, a document may be called a constitution but it is not constitutionalist in any meaningful sense. It is, rather, a manual of power dressed in constitutional language.

The second function is the legitimation of authority. A constitution must provide a credible account of why those who govern have the right to do so. In the modern democratic era, this means grounding governmental authority in the consent of the governed, expressed through elections and representative institutions. But as we shall see when we examine the Bangladesh

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Constitution in detail, the relationship between formal democratic procedures and genuine popular legitimation is enormously complex. Elections can be manipulated, representative institutions can be captured by particular interests, and the formal machinery of democratic consent can be operated in ways that produce anything but genuine accountability to the people.

The third function is the distribution of power. A constitution must not only limit power in the aggregate but must distribute it among different institutions in ways that prevent any single person or group from accumulating unchecked authority. This is the principle behind the separation of powers, the system of checks and balances, and the protection of an independent judiciary. The separation of powers, as theorized by Montesquieu in The Spirit of the Laws, is not merely a technical device of institutional design. It is a philosophical proposition about the nature of political power: that power corrupts, that those who hold it will tend to expand it, and that the only reliable safeguard against tyranny is to arrange governmental institutions so that power checks power.

The fourth function is the expression of identity and values. A constitution is also a symbolic document that expresses something about who a people are, what they value, and what kind of political community they aspire to be. The preamble and fundamental principles of a constitution perform this function. They articulate the moral foundations of the political order and provide interpretive guidance for the application of the constitution's more specific provisions. In the case of Bangladesh, this expressive dimension of the constitution was particularly fraught from the beginning, as we shall see, because the values it expressed were contested, and the contestation around those values drove much of the subsequent constitutional turbulence.

The fifth function is the provision of a durable framework for political life. A constitution must be stable enough to provide a reliable basis for political expectations while remaining flexible enough to adapt to changing circumstances. This tension between stability and adaptability is one of the central challenges of constitutional design. A constitution that is too rigid becomes a straitjacket, incapable of accommodating necessary change and vulnerable to revolutionary rupture. A constitution that is too flexible becomes merely advisory, easily bypassed or rewritten by whoever holds power at any given moment. The amendment procedures of a constitution are the primary mechanism for managing this tension, and as we shall see, Bangladesh's experience with constitutional amendment represents one of the most turbulent and instructive episodes in the comparative constitutional literature.

1.3 Theories of Constitutional Legitimacy

The question of constitutional legitimacy deserves extended treatment because it lies at the heart of the crisis that the Bangladesh Constitution has experienced throughout its history and that reached its most acute expression in the events of 2024. The question is simply stated but deeply complex in its implications: why should people obey the constitution? What gives the document its authority?

Several competing theories offer different answers to this question. The positivist answer, associated with the jurisprudence of Hans Kelsen, is that the constitution derives its authority from a basic norm, a Grundnorm, that is simply presupposed as the foundational legal

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assumption of the entire legal order. On this view, the question of why one should obey the constitution is ultimately a legal rather than a moral or political question, and the answer lies within the legal system itself. Kelsen's positivism was enormously influential in the development of legal science, but its limitation is precisely that it brackets the moral and political questions that are most urgent in a constitutional crisis. When a military coup overthrows a constitutional government, or when a democratically elected leader subverts democratic institutions from within, the Kelsenian framework struggles to explain why the new regime lacks legitimacy even if it successfully establishes its own Grundnorm through the exercise of effective power.

The natural law answer, by contrast, holds that the constitution derives its authority from its conformity to a body of higher moral principles that exist independently of the positive law. If the constitution violates these natural law principles, it loses its claim to obedience. This tradition has deep roots in the history of constitutional thought, and it had a significant influence on the natural rights language of the American Declaration of Independence and the French Declaration of the Rights of Man. In the context of Bangladesh, the natural law tradition is relevant to the question of whether constitutional amendments that systematically violated the rights of citizens and concentrated power in the hands of a single leader could claim constitutional legitimacy, or whether they were, in Aquinas's phrase, no law at all.

The social contract answer, developed by thinkers including Locke, Rousseau, and Kant, holds that the constitution derives its authority from the agreement, actual or hypothetical, of the people who are subject to it. The key question then becomes the nature of that agreement. Locke emphasized the voluntary consent of individuals to form a political community and to delegate authority to a government, with the crucial qualification that the government's authority expires if it violates the terms of the original social contract by acting against the people's interests. This Lockean framework has obvious relevance to the Bangladesh experience, where the argument was repeatedly made both by those who overthrew governments and by those who later declared those overthrows illegitimate that a particular government had forfeited its constitutional authority by breaking faith with the people.

John Rawls, whose work represents perhaps the most sophisticated twentieth-century development of the social contract tradition, argued in his theory of justice that the basic principles of a just constitution are those that rational individuals would choose from behind a "veil of ignorance," without knowing what position they would occupy in the society being constituted. Rawls distinguished between the basic structure of society, which the constitution primarily governs, and the specific arrangements within that structure. His later work, particularly Political Liberalism, developed the concept of "public reason," the idea that in a pluralist society the constitutional essentials must be justifiable on grounds that all reasonable citizens can accept regardless of their particular moral or religious comprehensive doctrines. This concept of public reason is particularly relevant to the debates around the inclusion of Islam as the state religion in the Bangladesh Constitution and the contested relationship between secularism and religion in the country's constitutional identity.

Jurgen Habermas offered a proceduralist answer to the question of constitutional legitimacy that has gained significant influence in contemporary constitutional theory. On the Habermasian view, the legitimacy of a constitution depends not on its conformity to substantive moral

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principles but on the quality of the deliberative process through which it was created and through which it is interpreted and applied. A constitution is legitimate if it was produced through a genuinely inclusive, rational, and open process of public deliberation, and if its ongoing interpretation occurs through similarly deliberative procedures. This proceduralist framework has important implications for the evaluation of the Bangladesh Constitution's original making and of the reform proposals currently being developed: the question of whether all significant voices were included in the deliberative process, and whether the process itself was structured to produce genuine deliberation rather than the ratification of predetermined outcomes, becomes central to the question of whether the resulting document can claim democratic legitimacy.

The democratic constitutionalist answer, developed by scholars including Ackerman, Frank Michelman, and more recently Roberto Mangabeira Unger, emphasizes the ongoing democratic character of constitutional life rather than the moment of original foundation. Bruce Ackerman's concept of "dualist democracy" distinguishes between normal politics, in which the ordinary legislative machinery operates within established constitutional frameworks, and constitutional politics, in which the people themselves mobilize to establish or transform the fundamental terms of their political life. On Ackerman's account, a constitution derives its higher-law authority from the fact that it was established through a moment of exceptional popular mobilization and constitutional deliberation that transcends the ordinary processes of representative government. This framework is suggestive for analyzing the Bangladesh situation, where the July-August 2024 mass uprising can be understood as precisely such a moment of extraordinary popular mobilization, one that delegitimized the existing constitutional order and created the political conditions for constitutional transformation.

1.4 The Post-Colonial Constitutional Predicament

Understanding the Bangladesh Constitution requires situating it within the specific context of post-colonial constitution-making, which has a distinctive character that differentiates it from both the classical Western models of constitutional foundation and from constitutional transitions in established liberal democracies.

Post-colonial constitution-making occurs in conditions marked by several structural features that create distinctive challenges. First, there is the legacy of colonial legal institutions, which transplanted certain legal forms without the accompanying social and political conditions that give those forms their effectiveness. The colonial administration created bureaucratic and judicial structures that were designed primarily to serve the administrative needs of a colonial power rather than to provide genuine accountability or protect the rights of the governed. These institutional legacies persist long after formal independence and shape the possibilities available to post-colonial constitution-makers in ways that are often underappreciated.

Second, there is the challenge of building constitutional culture in societies where the practice of constitutionalism has no deep roots. A constitution's effectiveness depends enormously on the existence of a political culture that treats the document as genuinely binding, that stigmatizes violations of constitutional norms, and that maintains sufficient institutional capacity to enforce constitutional commitments. Building this culture is a long-term project that cannot be

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accomplished simply by writing an admirable constitutional text. Bangladesh's constitutional history illustrates this challenge with particular clarity.

Third, there is the tension between the universalist aspirations of constitutional rights and the particularist realities of societies that are deeply divided along lines of religion, ethnicity, class, or region. A constitution must somehow accommodate genuine diversity while establishing a framework of common citizenship that transcends those divisions. In Bangladesh, the divisions around Bengali identity, indigenous rights, the status of religious minorities, and regional differences have been sources of persistent constitutional tension.

Fourth, there is what scholars have called the problem of "constitutional cultures under construction." When a new nation is formed in the wake of a liberation struggle or an anti-colonial revolution, the constitution is typically drafted in conditions of enormous political excitement and ideological ferment, but also in conditions of institutional fragility and political inexperience. The Bangladesh Constitution was drafted in just such conditions, and many of its problems can be traced to the particular pressures and limitations under which it was created.

The scholarship on post-colonial constitutionalism has grown significantly in recent years, with contributions from scholars including Ran Hirschl, Rosalind Dixon, Tom Ginsburg, and Tarunabh Khaitan that have deepened our understanding of the specific challenges facing post-colonial constitutional systems. Ginsburg and Huq's important 2018 book, "How Democracies Die," and their related scholarship on "constitutional retrogression," the gradual erosion of democratic norms through legally sanctioned means rather than dramatic coups, provides an exceptionally useful analytical framework for understanding the trajectory of Bangladesh's constitutional democracy under Sheikh Hasina's governments after 2009.

CHAPTER TWO: THE MAKING OF THE BANGLADESH CONSTITUTION -- HISTORY, CONTEXT, AND THE POLITICS OF CONSTITUTIONAL DESIGN

2.1 The Liberation War and the Constitutional Mandate

The Constitution of Bangladesh cannot be understood apart from the extraordinary circumstances of its birth. The Liberation War of 1971 was not merely a military conflict or a political struggle for independence. It was a transformative national experience that profoundly shaped the political identity of the new nation and the constitutional vision of those who were charged with giving it legal form.

The immediate trigger of the Liberation War was the military crackdown launched by the Pakistani army on March 25, 1971, following the Awami League's overwhelming victory in the December 1970 general elections. The Awami League, led by Sheikh Mujibur Rahman, had won 167 of the 169 National Assembly seats allocated to East Pakistan, giving it an absolute majority in the entire Pakistani National Assembly. The military-dominated government of West Pakistan, unwilling to accept the democratic mandate of the Bengali majority, refused to transfer power

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and instead launched a brutal military operation, Operation Searchlight, that involved mass killings, systematic rape, and the destruction of property on an enormous scale.

The Proclamation of Independence issued on March 26, 1971, and the Mujibnagar Government formed on April 10 of that year, established the legal framework for the liberation struggle. The Proclamation was not merely a political declaration but a constitutional act: it established the legal personality of the new state, defined the basis of its governmental authority, and committed it to democratic governance. The Provisional Constitution of Bangladesh Order, 1972, which governed the country during the transitional period between liberation on December 16, 1971 and the adoption of the permanent constitution, further developed these constitutional foundations.

The experience of the liberation war shaped the constitutional vision of the founders in several important ways. The war was fought with extraordinary popular participation, and its character as a people's war gave the new nation's leaders a strong commitment, at least in principle, to popular sovereignty and democratic governance. The mass atrocities committed by the Pakistani military gave the new constitution's provisions on fundamental rights a particular urgency: the drafters had lived through the consequences of a state that recognized no limits on its power over individuals, and they were determined to build a constitutional framework that would prevent similar abuses.

At the same time, the liberation war was fought under the leadership of the Awami League and in particular under the extraordinary personal authority of Sheikh Mujibur Rahman, whom the nation celebrated as Bangabandhu, the Friend of Bengal, and the Father of the Nation. This concentration of popular legitimacy in a single political leader and party created structural pressures that would prove fatal to the constitutional project. When a new nation's founding is associated primarily with one leader and one party rather than with a genuinely national coalition, the temptation to conflate the interests of that leader and party with the interests of the nation itself is enormous, and the institutional guardrails established by the constitution may prove insufficient to resist it.

2.2 The Drafting Process: Strengths and Limitations

The Constitution Drafting Committee was formed in 1972 under the chairmanship of Dr. Kamal Hossain, who was then the Law Minister and would later become one of Bangladesh's most distinguished constitutional lawyers and democratic advocates. The committee had 34 members, all elected to the Constituent Assembly in the 1970 elections, and it worked at extraordinary speed: the committee held its first meeting on April 17, 1972, and the constitution bill was presented to the Constituent Assembly on October 12 of the same year. The entire constitution was adopted on November 4, 1972, less than seven months after the drafting process began.

This rapid drafting was in some respects an impressive achievement, reflecting the political will to establish constitutional governance as quickly as possible after the devastation of the liberation war. But it also meant that there were significant limitations in the deliberative process. The committee did invite public submissions: a total of 98 recommendations were received from individuals who responded to a public notice inviting comments. But this level of

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public participation was modest compared with what contemporary constitutional theory regards as the benchmark for legitimate constitution-making. The process was dominated by the Awami League, which held virtually all the seats in the Constituent Assembly by virtue of its overwhelming victory in the 1970 elections, and this dominance, while democratically defensible in formal terms, meant that alternative constitutional visions received little serious consideration.

The drafters drew heavily on international models, particularly the Westminster parliamentary tradition of Britain and the Indian Constitution of 1949. The Indian influence was especially significant, as India had completed a more deliberative constitutional process just two decades earlier and had developed a comprehensive constitutional framework that the Bangladesh drafters could draw upon. The influence of the Indian Constitution is visible in many provisions of the Bangladesh Constitution: the structure of fundamental rights, the directive principles of state policy, the organization of the executive and legislature, and the judicial structure all reflect this influence.

However, the Bangladesh drafters also made choices that departed significantly from the Indian model and that would prove consequential. The decision to establish a parliamentary system in which the Prime Minister had substantially unchecked executive authority, combined with the absence of meaningful mechanisms for holding the executive accountable between elections, created a constitutional structure that was highly vulnerable to concentration of power. The absence of a genuine federal structure, which in India provides an important check on central power, made Bangladesh's constitutional framework even more susceptible to centralization.

The most important and contentious moment in the drafting process came when Manabendra Narayan Larma, representing the Chittagong Hill Tracts and the indigenous Jumma peoples of that region, made his impassioned plea during the constitutional debates to define citizenship as "Bangladeshi" rather than "Bengali." Larma argued, with eloquence and foresight, that defining all citizens as "Bengali" denied the distinct identity of the non-Bengali communities, including his own Chakma people, who had lived in the territory of Bangladesh for centuries and who were citizens of the new republic but were not Bengali in their language, culture, or history. His argument was rejected. The constitution defined the nation as Bengali, a decision that would have profound consequences for the indigenous peoples of the Chittagong Hill Tracts and that remains a source of unresolved constitutional tension more than five decades later.

This rejection of Larma's proposal illustrates a broader limitation in the drafting process: the constitution was conceived primarily as an expression of Bengali nationalist identity rather than as a framework for governing the full diversity of the population within the national territory. The dominance of Bengali identity in the constitutional text, while understandable in the context of the liberation war, which had been fought partly as a struggle for Bengali cultural and linguistic rights, created a constitution that was less than fully inclusive and that established a hierarchy of belonging that disadvantaged non-Bengali communities from the moment of its adoption.

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2.3 The Four Pillars: Nationalism, Socialism, Democracy, and Secularism

The original constitution of 1972 established four fundamental principles of state policy, which have been described as the four pillars of the republic and which were directly derived from the political philosophy of Sheikh Mujibur Rahman, known as Mujibism: nationalism, socialism, democracy, and secularism. These four principles are the most philosophically interesting and historically contested elements of the entire constitutional text, and they deserve extended examination.

Nationalism, as articulated in the original constitution, was specifically Bengali nationalism. Article 9 of the original constitution stated that "the unity and solidarity of the Bengali nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle for national liberation, shall be the basis of Bengali nationalism." This formulation was the constitutional expression of the political conviction that the liberation struggle had been a nationalist struggle by and for the Bengali people, and that the new state derived its identity and legitimacy from that national character.

The problems with this formulation were multiple. As Larma had pointed out during the drafting debates, it excluded from full constitutional recognition the non-Bengali citizens of the republic. It also embedded in the constitution a particular historical interpretation of the liberation struggle that was contested: while Bengali nationalism was certainly a central element of the movement for independence, the struggle also had other dimensions, including democratic aspirations, class-based grievances, and opposition to Pakistani military rule, that were not captured in the purely nationalist framing. Furthermore, the identification of the state with Bengali nationalism created a particular relationship with India and with the global Bengali diaspora that had implications for Bangladesh's foreign policy and international relations that were not fully thought through in the constitutional text.

Socialism, the second pillar, was defined in the original constitution as a commitment to a "socialist economic system" with the goal of establishing "an exploitation-free society." Article 10 stated that a socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society free from the exploitation of man by man. This was a significant constitutional commitment, but its practical content was vague from the outset. The 1970 elections had been fought on a platform that included strong socialist economic commitments, including the nationalization of major industries and the redistribution of land, and the early Awami League government did pursue significant nationalization policies. But the constitutional commitment to socialism was never translated into a clearly specified economic program with constitutional force, and as Bangladesh's economic trajectory shifted in more market-oriented directions over subsequent decades, the constitutional language of socialism became increasingly disconnected from economic reality.

Democracy, the third pillar, was the most consensual of the four principles in formal terms, though the practice of democratic governance would prove enormously challenging. The original constitution established a Westminster-style parliamentary democracy with a cabinet responsible to the legislature, regular elections, and the protection of fundamental rights including freedom of speech, assembly, and association. The parliamentary system, in theory, provided a

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framework for accountable, representative governance. In practice, as we shall discuss at length, the parliamentary system was quickly subverted, first by the constitutional amendments of 1973-1975 that concentrated power in the presidency and then established a one-party state, and later by the systematic use of constitutional mechanisms to entrench the dominance of whichever party happened to control the government.

Secularism, the fourth pillar, was perhaps the most philosophically complex and historically controversial of the principles. Article 12 of the original constitution defined secularism as requiring the elimination of communalism in all its forms, the prohibition of granting by the state of political status in favour of any religion, the prohibition of the abuse of religion for political purposes, and the prevention of any discrimination against or persecution of persons practicing a particular religion. This was an explicitly procedural and negative conception of secularism, focused on what the state must not do rather than on any positive commitment to irreligion or hostility toward religion.

The context for this commitment to secularism was the Pakistani state's use of Islam as an ideological basis for denying Bengali identity and political rights. The liberation war had been fought in part against the Pakistani military's invocation of Islamic solidarity to justify the suppression of Bengali cultural and linguistic rights. The founders of Bangladesh were deeply committed to the principle that religious identity should not determine citizenship or political rights, and that the new state must not repeat the mistakes of Pakistani constitutionalism by identifying the state with a particular religion. The commitment to secularism was, in this sense, a direct constitutional response to the lived experience of religious politics at its most destructive.

However, the relationship between secularism and Islam in Bangladeshi society was, from the beginning, far more complex than any simple constitutional principle could capture. Bangladesh was, and is, a predominantly Muslim society in which religion plays a central role in personal and social life. The secularism enshrined in the 1972 constitution was not, for the vast majority of the population, an expression of hostility to religion but rather a commitment to civic equality and the separation of religious and state authority. Nevertheless, the political mobilization of Islamic identity by parties and movements that opposed the Awami League, and the strategic exploitation of religious sentiment by political actors seeking to delegitimize the secularist constitution, created persistent pressure on this principle.

The eventual removal of secularism as a fundamental principle by the Fifth Amendment of 1979, which replaced it with the formula "absolute trust and faith in the Almighty Allah," and the insertion of Islam as the state religion by the Eighth Amendment of 1988, represented the most dramatic manifestation of this pressure. But as we shall see, the constitutional trajectory around religion and secularism in Bangladesh is not a simple story of secularism's defeat. The Fifteenth Amendment of 2011 restored secularism as a fundamental principle while simultaneously retaining Islam as the state religion, creating a constitutional arrangement of extraordinary philosophical complexity and internal tension.

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2.4 The Structural Architecture of the 1972 Constitution

Beyond the fundamental principles, the original 1972 constitution established a specific institutional architecture for governing the republic, and the choices made in that architecture have had long-term consequences that continue to shape Bangladesh's constitutional debates to this day.

The constitution established a parliamentary system of government with a clear hierarchy of constitutional institutions. At the apex was the Constituent Assembly, which served simultaneously as the parliament for the newly independent state and as the body responsible for adopting the constitution. The President was established as the constitutional head of state, elected by parliament, with primarily ceremonial functions. The Prime Minister was the head of government, holding effective executive power. The cabinet was collectively responsible to parliament. The Supreme Court, consisting of an Appellate Division and a High Court Division, was established as the apex judicial institution, with the power to interpret the constitution and to review the legality of governmental acts.

This parliamentary framework was, on its face, a reasonable constitutional design for a new democracy. Parliamentary systems have many advantages over presidential systems in conditions of democratic transition: they provide for more flexible government formation, they tend to be more accommodating of coalition politics, and they generally provide cleaner mechanisms for removing governments that lose parliamentary confidence without the institutional rigidity that can paralyze presidential systems during periods of political conflict. The Westminster model in particular, with which the Bangladesh drafters were most familiar through the experience of Pakistani constitutionalism and through legal education in the British tradition, provided a well-developed framework that had proved workable in a range of different contexts.

However, the particular version of parliamentarism adopted in Bangladesh contained several structural features that would prove problematic. The most significant was the weakness of the mechanisms for executive accountability. While the Prime Minister in theory was accountable to parliament, the practice of "anti-defection" measures, which made it extremely difficult for members of parliament to vote against their party's line, meant that a government with a parliamentary majority was largely insulated from legislative accountability between elections. Article 70 of the original constitution, which imposed mandatory vacation of seat for members who voted against their party or resigned from it, was widely criticized from the outset as a constraint on genuine parliamentary debate and accountability. But it survived in the constitution because it served the interests of the dominant party, which had everything to gain from ensuring that its parliamentary majority was stable and that individual members could not be persuaded to cross the floor.

The judicial architecture established in the original constitution was, in many respects, admirable. The Supreme Court was given genuine independence in institutional terms, with judges appointed for fixed terms and enjoying security of tenure. The High Court Division was given an extensive writ jurisdiction that allowed individuals to challenge governmental action directly before the court. The constitution's guarantee of judicial review, while not using that

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specific term, was clear in its import: Article 7(2) established the supremacy of the constitution, Article 26 prohibited the making of laws inconsistent with the fundamental rights guaranteed in Part III of the constitution, and Article 44 guaranteed the right to move the High Court Division for the enforcement of fundamental rights. The overall framework established a constitutional court system with significant potential for protecting rights and checking governmental power.

The fundamental rights guaranteed in Part III of the constitution were comprehensive and largely consistent with international human rights standards of the time. They included the right to equality before law (Article 27), freedom from discrimination on grounds of religion, race, caste, sex, or place of birth (Article 28), equality of opportunity in public employment (Article 29), the right to protection in respect of trial and punishment (Article 35), the right to freedom of movement (Article 36), the right to freedom of assembly (Article 37), the right to freedom of association (Article 38), the right to freedom of thought and conscience and of speech (Article 39), the right to freedom of profession or occupation (Article 40), the right to freedom of religion (Article 41), and the right to property (Article 42). These were substantive commitments, not merely hortatory aspirations.

However, alongside these rights guarantees, the constitution also included a series of broad exception clauses that significantly qualified their practical effect. Freedom of speech, for example, was subject to "reasonable restrictions" imposed by law relating to the security of the state, friendly relations with foreign states, public order, decency or morality, or contempt of court, defamation, or incitement to an offence. The breadth of these permissible restrictions, particularly the reference to public order and the security of the state, gave the legislature and the executive enormous latitude to restrict speech in ways that were formally constitutional. As we shall see, this latitude was extensively exploited by successive governments to suppress political opposition and silence critics.

The directive principles of state policy established in Part II of the constitution set out a range of social and economic goals that the state was directed to pursue: providing for basic necessities including food, clothing, shelter, education, and medical care; establishing a uniform and universal system of education; attaining equal rights and opportunities for all citizens; ensuring just and humane conditions of work and a living wage; making provision for public assistance in cases of undeserved want; protecting the rights of workers; achieving equality of educational opportunity for all citizens. These directive principles were explicitly stated to be not judicially enforceable, but they were intended to guide the legislative and executive branches in the development of policy.

The non-justiciable character of the directive principles reflected the influence of the Indian constitutional model, which had established a similar framework. The philosophical rationale for this distinction between justiciable fundamental rights and non-justiciable directive principles was that social and economic rights, unlike civil and political rights, require positive governmental action and the expenditure of resources that the constitution cannot command the government to provide. In theory, the directive principles were to be pursued progressively as resources permitted. In practice, the distinction between rights that courts could enforce and principles that they could not meant that the ambitious social and economic commitments of the

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constitution had little practical constitutional force, and the gap between constitutional promise and social reality in Bangladesh has remained enormous throughout the constitution's history.

CHAPTER THREE: THE GREAT UNDOING -- CONSTITUTIONAL AMENDMENTS FROM 1973 TO 1979 AND THE COLLAPSE OF THE ORIGINAL CONSTITUTIONAL ORDER

3.1 The Fourth Amendment: The Constitutional Coup of 1975

The constitutional history of Bangladesh is a story told largely through its amendments. Seventeen amendments have been made to the constitution since its adoption in 1972, and each tells a story of political struggle, constitutional crisis, and the use and abuse of the amendment power. But of all the amendments, the Fourth Amendment of January 25, 1975, stands as the most dramatic, the most consequential, and the most instructive in terms of what it reveals about the vulnerability of constitutional democracy to authoritarian subversion from within.

To understand the Fourth Amendment, one must understand the political crisis that preceded it. By 1974-1975, Bangladesh was in the grip of a catastrophic famine that claimed hundreds of thousands of lives, a consequence of a combination of natural disaster, economic mismanagement, and governmental failure. The Awami League government's handling of the famine was widely criticized, and popular disillusionment with the government was intense. Law and order had broken down significantly, and politically motivated violence was endemic. The opposition, including both left-wing groups and right-wing and religious parties, was mounting increasing pressure on the government. Sheikh Mujibur Rahman, who had returned from Pakistani captivity to a hero's welcome in January 1972, now faced a political situation that was slipping out of his control.

The Fourth Amendment was the government's constitutional response to this crisis, and it was breathtaking in its scope and its audacity. In a single legislative act, the parliamentary system of government established by the 1972 constitution was abolished and replaced with a presidential system in which the President held effectively unchecked executive authority. The President, who was now to be directly elected rather than chosen by parliament, was given the power to appoint and dismiss ministers, to legislate by decree when parliament was not in session, and to dissolve parliament. All executive power was concentrated in the presidency.

More alarmingly, the Fourth Amendment also created the legal framework for a one-party state. It amended Article 38 of the constitution to restrict the right to form associations and unions, and it also removed the provision that required a two-thirds majority for constitutional amendment, reducing the threshold to an ordinary majority. This latter change was particularly significant because it removed the supermajority requirement that had been intended to prevent any single party with a bare majority from making fundamental constitutional changes.

The capstone of the Fourth Amendment was the establishment of BAKSAL, the Bangladesh Krishak Sramik Awami League, as the only legal political party in Bangladesh. All other

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political parties were abolished. Their members were given a brief period to join BAKSAL or face the consequences. The newspaper industry was nationalized, reducing the number of legally publishable newspapers to four. The free press, which had been a vibrant if sometimes partisan element of Bangladeshi civil society, was effectively eliminated.

In constitutional terms, the Fourth Amendment was a revolution effected through constitutional forms. It used the amendment power of the constitution to fundamentally transform the constitutional order, abolishing the parliamentary system, eliminating political pluralism, restricting press freedom, and concentrating power in a single executive. The question of whether such a transformation could be legitimate even if it was formally enacted through the prescribed constitutional amendment procedure is one of the central questions of constitutional theory, and the Bangladesh experience provides a particularly stark case study.

The doctrine of basic structure, which we shall examine in detail in a later chapter, was developed precisely in response to this kind of constitutional abuse. The argument of the basic structure doctrine is that there are certain fundamental features of a constitution that cannot be destroyed even by a formally valid constitutional amendment, because their destruction would amount not to an amendment of the constitution but to its abolition and replacement with a different constitutional order. The Fourth Amendment, which abolished parliamentary democracy, eliminated multi-party politics, and concentrated power in a single executive, would seem to be precisely the kind of transformation that the basic structure doctrine should prohibit.

But the Fourth Amendment was never judicially challenged in the courts of Bangladesh. Sheikh Mujibur Rahman was assassinated on August 15, 1975, in a military coup that killed him and most of his family, including his wife and three sons, though his two daughters, who happened to be abroad at the time, survived. The assassination was followed by a period of intense political instability in which several competing military factions struggled for power. The BAKSAL constitution was abandoned without judicial scrutiny, and Bangladesh entered a period of martial law.

The constitutional lessons of the Fourth Amendment are profound and deserve careful study. First, it demonstrates that constitutional democracy can be destroyed through constitutional forms: the very procedures designed to protect the constitution can be used against it if there are no effective limits on the amendment power. Second, it demonstrates the importance of a genuinely independent judiciary that is willing to scrutinize constitutional amendments for their compatibility with fundamental constitutional principles. Third, it demonstrates the danger of concentrating power in a single political leader whose personal authority is treated as the source of constitutional legitimacy rather than the constitution itself. Fourth, it demonstrates the importance of a robust civil society, independent press, and opposition political forces as checks on executive power that operate outside the formal constitutional framework.

3.2 The Fifth and Seventh Amendments: Laundering Martial Law Through Constitutional Change

The period between August 1975 and April 1979 was governed by martial law. Several military governments succeeded one another in rapid succession, and the country was ruled by decree,

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without any constitutional framework. The constitution, insofar as it existed at all, was a document suspended in political limbo: not formally abrogated but not effectively operative either. This was precisely the "constitutional vacuum" that the constitution's critics in 2024 would invoke to describe the situation after the fall of Sheikh Hasina: a situation in which the ordinary constitutional order had broken down without providing any clear legal basis for what replaced it.

The Fifth Amendment of 1979 was the mechanism through which General Ziaur Rahman's government sought to restore constitutional governance after the period of martial law, and it did so by the extraordinary device of making the constitution itself ratify the period of martial law retrospectively. The amendment inserted a provision into the Fourth Schedule of the constitution ratifying and confirming all Proclamations, Martial Law Regulations, Martial Law Orders and other laws and tribunals made during the period from August 15, 1975 to April 9, 1979. In essence, the constitution was amended to declare constitutional everything that had been done during the martial law period, regardless of whether those acts would have been constitutional under the 1972 framework.

This retrospective laundering of martial law actions through constitutional amendment was a remarkable constitutional maneuver, and it had profound implications for constitutional theory. It raises the question: can a constitutional amendment declare constitutional actions that were, at the time they were taken, clearly unconstitutional? Can the amendment power be used not merely to change the constitution going forward but to retroactively validate past violations of it? The intuitive answer is no: the amendment power is a power to change the constitutional rules for the future, not to revise the constitutional assessment of past conduct. But the Fifth Amendment attempted precisely this retrospective rehabilitation of martial law governance.

The Fifth Amendment also made several substantive changes to the constitutional text, including the replacement of secularism with the formula "absolute trust and faith in Almighty Allah" and the restoration of multiparty politics. The restoration of multiparty politics was a genuine liberalization, but the replacement of secularism with religious faith as a constitutional principle was a fundamental change in the character of the republic that would shape Bangladesh's constitutional identity for decades.

The Seventh Amendment of 1986 performed a similar function for the martial law period of General Hussain Muhammad Ershad, who had taken power in a military coup in March 1982. The Seventh Amendment ratified and confirmed the Proclamation of Martial Law of March 24, 1982, and all Martial Law Proclamations, Orders, and Regulations issued between that date and November 10, 1986. Like the Fifth Amendment, it was an attempt to use constitutional forms to legitimize actions that had been taken outside the constitutional order.

The constitutional validity of both the Fifth and Seventh Amendments was eventually challenged before the courts, and those challenges led to some of the most important judgments in Bangladesh's constitutional history. The Supreme Court's eventual rulings, particularly the judgment in Bangladesh Italian Marble Works Ltd v Bangladesh and other related cases, and culminating in decisions issued in 2010 and 2011 that declared the Fifth Amendment unconstitutional insofar as it had introduced the declaration of absolute trust and faith in the

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Almighty Allah and made other changes to the fundamental principles, represented a dramatic judicial assertion of the limits of the amendment power.

3.3 The Eighth Amendment: Islam as State Religion and the Secularism Paradox

The Eighth Amendment of 1988, enacted under the government of General Ershad, made two changes to the constitution that were philosophically explosive in their implications. First, it inserted Islam as the state religion of Bangladesh, as what is now Article 2A of the constitution, which reads: "The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions." Second, it established permanent High Court benches in six divisional cities outside Dhaka.

The insertion of Islam as the state religion was a fundamental departure from the secularist spirit of the original 1972 constitution. By declaring a state religion, the constitution appeared to contradict the principle of non-discrimination on grounds of religion guaranteed in Article 28 and the commitment to secularism (as subsequently restored) in Article 8. The arrangement created an obvious tension: how can the state maintain neutrality among religions, as required by the principle of secularism, while simultaneously designating one religion as the state religion? How can there be equality of religious practice for all citizens, as promised in Article 2A itself, if one religion occupies a specially privileged constitutional position?

This paradox was explicitly engineered into the constitutional text by the Fifteenth Amendment of 2011, which restored secularism as a fundamental principle while retaining Islam as the state religion. The resulting constitutional arrangement is philosophically incoherent in a technical sense but politically explicable: it was a compromise designed to satisfy the demands of both the secularist constituency that supported the Awami League and the Muslim constituency that supported the retention of Islam as the state religion. Whether such a compromise is constitutionally sustainable in the long run, and how courts should interpret constitutional provisions that appear to be in tension with one another, are among the most interesting jurisprudential questions raised by the Bangladesh constitutional text.

In the comparative constitutional literature, the combination of a secular constitutional principle with a state religion is not unique to Bangladesh. The English constitutional arrangement, in which the Church of England is the established church while the state broadly respects religious freedom, is perhaps the most familiar example. Several Scandinavian countries maintained established Lutheran churches for much of the twentieth century while operating as liberal secular democracies in practice. These examples suggest that the formal designation of a state religion need not be incompatible with genuine religious tolerance and equality in practice. But they also suggest that the constitutional arrangement must be interpreted with sufficient sophistication to prevent the nominal establishment from becoming a vehicle for discrimination or the entrenchment of religious privilege at the expense of minority communities.

The Eighth Amendment's other provision, establishing permanent High Court benches in divisional cities, was intended to improve access to justice for litigants outside Dhaka. But this provision was struck down by the Appellate Division of the Supreme Court in the landmark Anwar Hossain Chowdhury case of 1989, which represents the most important constitutional

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adjudication in Bangladesh's history and which we shall examine in detail in the chapter on the basic structure doctrine.

CHAPTER FOUR: THE BASIC STRUCTURE DOCTRINE IN BANGLADESH -- JURISPRUDENTIAL FOUNDATIONS, JUDICIAL DEVELOPMENT, AND CONSTITUTIONAL CODIFICATION

4.1 Origins of the Basic Structure Doctrine: From India to Bangladesh

The doctrine of basic structure is one of the most significant and contested concepts in the constitutional law of the Commonwealth. It holds that there are certain fundamental features of a constitution that cannot be destroyed even through a formally valid constitutional amendment, because their destruction would amount to the destruction of the constitution itself rather than its amendment. The doctrine operates as a judicial limit on the parliament's power to amend the constitution, establishing that there are constitutional provisions so fundamental that they lie beyond the reach of even the supermajority required for constitutional amendment.

The doctrine originated in the Indian Supreme Court's landmark decision in Kesavananda Bharati v State of Kerala, decided in 1973. In that case, a bench of thirteen judges considered whether Parliament's power under Article 368 of the Indian Constitution to amend the constitution was unlimited, or whether it was subject to implied limitations. By a majority of seven to six, the court held that Parliament could amend any provision of the constitution but could not alter or destroy its basic structure or essential features. The majority did not provide a complete list of what comprised the basic structure, but various judges identified elements including the supremacy of the constitution, the republican and democratic form of government, the secular character of the constitution, separation of powers between the legislature, executive, and judiciary, and the federal character of the constitution.

The philosophical foundations of the basic structure doctrine draw on several important intellectual traditions. One is the natural law tradition's insistence that there are moral limits on the exercise of even formally valid legal power. Another is the political philosophy of constituent power: the idea, developed by theorists including Emmanuel-Joseph Sieyes, Carl Schmitt, and more recently Claude Klein and Andras Sajo, that there is a fundamental distinction between the constituent power of the people, which creates the constitution, and the constituted powers, including the legislature, which the constitution creates. On this view, the parliament's amendment power is a constituted power that must remain within the boundaries established by the constituent power: parliament can change many things in the constitution, but it cannot use the amendment power to usurp the role of the constituent power and create a fundamentally different constitutional order.

Aharon Barak, the former President of the Israeli Supreme Court and one of the most influential constitutional theorists of our time, has developed the concept of "unconstitutional constitutional amendments" as a way of understanding the limits on amendment power. Barak argues that a constitutional amendment can be substantively unconstitutional even if it was formally enacted

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through the prescribed procedure, because constitutional amendments must conform not only to procedural requirements but also to the substantive identity of the constitution. An amendment that destroys a fundamental constitutional value or identity can be invalid even if it was adopted through the correct process.

4.2 The Anwar Hossain Chowdhury Case: Bangladesh Embraces the Basic Structure Doctrine

The Bangladesh Supreme Court's encounter with the basic structure doctrine came in the landmark case of Anwar Hossain Chowdhury v Bangladesh, commonly referred to as the Eighth Amendment case, decided by the Appellate Division in 1989. The case arose from a challenge to the provision of the Eighth Amendment that had established permanent High Court benches in six divisional cities. The petitioner argued that this provision was unconstitutional because it undermined the unitary character of the Supreme Court and thereby violated the basic structure of the constitution.

The Appellate Division, by a majority of four to three, upheld the challenge and struck down the impugned provision of the Eighth Amendment. In reaching this conclusion, the court squarely embraced the basic structure doctrine. The majority held that while Article 142 of the constitution conferred on Parliament the power to amend the constitution, that power was not unlimited. There were certain basic features of the constitution, including its supremacy, its democratic character, and the independence of the judiciary as a unified institution, that could not be destroyed by constitutional amendment.

The reasoning of the majority in the Anwar Hossain Chowdhury case was sophisticated and drew on the Indian precedents of Kesavananda Bharati and subsequent Indian cases. The court distinguished between the power of amendment and the power of destruction: Parliament could amend the constitution, but it could not use the amendment power to destroy it. The establishment of High Court benches in divisional cities was struck down not because decentralization of the judiciary was inherently unconstitutional but because the specific manner in which it was done effectively fragmented the Supreme Court into separate regional courts, undermining its character as a unified apex judicial institution.

The significance of the Anwar Hossain Chowdhury case extends far beyond its specific holding about the High Court benches. It established, for the first time in Bangladesh's constitutional history, that the judiciary would subject constitutional amendments to meaningful scrutiny and would not simply defer to Parliament's formal exercise of the amendment power. It established the principle that the constitution has a core identity that is protected against parliamentary interference. And it provided the jurisprudential foundation for subsequent constitutional adjudication on a range of issues, including the validity of the Fifth Amendment (which had retroactively ratified the martial law period), the Thirteenth Amendment (which had established the caretaker government system), and the Fifteenth Amendment (which had abolished the caretaker government system while restoring the fundamental principles of 1972).

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4.3 The Codification of Basic Structure: Article 7B and its Implications

The most unusual development in Bangladesh's basic structure jurisprudence came with the Fifteenth Amendment of 2011, which inserted Article 7B into the constitution. This article, which has no clear parallel in any other constitutional system, explicitly codifies the basic structure doctrine in the constitutional text itself:

"Notwithstanding anything contained in article 142 of the Constitution, the preamble, all articles of Part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means."

This was a remarkable constitutional innovation. Bangladesh became, as commentators have noted, perhaps the only country in the world where the basic structure doctrine is not merely a judicial precedent but an explicit constitutional provision. The irony, of course, was that this provision was inserted by the Awami League government of Sheikh Hasina as part of the Fifteenth Amendment, which was itself a sweeping constitutional revision that included, among other things, the abolition of the caretaker government system that had been established by the Thirteenth Amendment.

The jurisprudential implications of Article 7B are complex. On one reading, the article effectively elevated certain provisions of the constitution to the status of eternity clauses, unamendable by any means. It placed the fundamental principles of state policy in Part II, the fundamental rights in Part III (with the qualification relating to Part IXA, which deals with the state of emergency), and the preamble in a category of constitutional provisions protected against amendment.

However, the article also created a paradox: if the basic structure of the constitution cannot be amended, but Article 7B itself is part of the constitution and purports to be an expression of the basic structure, then can Article 7B be amended? If the answer is no, then the constitution has effectively entrenched a particular version of the basic structure that future generations cannot revisit even through the democratic process. If the answer is yes, then the protection supposedly afforded by Article 7B can be removed by the same amendment process that the article purports to constrain.

The further irony is that Article 7B was itself part of the Fifteenth Amendment, and the Fifteenth Amendment was challenged in the courts after 2024. In December 2024, the High Court Division declared the Fifteenth Amendment partially illegal, restoring the caretaker government provision that the Fifteenth Amendment had abolished and reinstating provisions for referendums on constitutional amendments. This created the extraordinary situation in which a constitutional amendment that had inserted a provision protecting the basic structure was itself found to violate the basic structure.

The Asaduzzaman case, decided by the Appellate Division after the Fifteenth Amendment, provided further jurisprudential development of the Article 7B framework. In that case, the court

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held that the Sixteenth Amendment, which had transferred the power to remove Supreme Court judges from the Supreme Judicial Council to Parliament, was unconstitutional because it violated the basic structure of the constitution, specifically the principle of judicial independence. The court relied primarily on Article 7B rather than on the judicially developed basic structure doctrine from the pre-Fifteenth Amendment era. This confirmed that Article 7B had effectively superseded the older judge-made doctrine, at least for constitutional amendments adopted after 2011.

4.4 Comparative Perspectives on Amendment Limits: Global Developments

The debate over the limits of constitutional amendment power has been one of the most active areas of comparative constitutional law scholarship in recent years. The proliferation of explicit eternity clauses in constitutions around the world, the development of judicial doctrines limiting amendment power in countries including India, Brazil, Germany, and Turkey, and the theoretical debates among constitutional scholars about the justifiability of amendment limits in a democratic polity have all contributed to a rich and growing literature.

The German Basic Law's eternity clause, contained in Article 79(3), is the most established and widely studied example of an explicit constitutional provision protecting certain features of the constitution against amendment. The Article 79(3) eternity clause protects the federal division of Germany into Lander, the participation of the Lander in legislation, and the fundamental principles of Articles 1 and 20, which include the guarantee of human dignity and the democratic and social character of the federal state. The German Constitutional Court has used this provision to develop a robust doctrine of unconstitutional constitutional amendments that has been enormously influential on constitutional theory worldwide.

In Brazil, the Federal Constitution of 1988 contains what Brazilians call "petrified clauses" (clausulas petreas) in Article 60(4), which protect the federal form of government, the direct, secret, universal, and periodic suffrage, the separation of powers, and individual rights and guarantees. The Brazilian Supreme Court (Supremo Tribunal Federal) has applied these provisions in a number of important decisions, establishing Brazil as another significant laboratory for the study of amendment limits.

The Turkish Constitutional Court's doctrine of "review of constitutionality as to form and substance" has been developed in a series of controversial decisions, most notably the 2008 decision striking down amendments that had removed the headscarf ban in universities, that has generated significant academic debate. The court's willingness to review constitutional amendments for their substantive compatibility with the secular character of the Turkish constitution, even where the amendments were formally enacted through the prescribed procedure, illustrates the reach that the amendment-limits doctrine can achieve.

Recent scholarship has challenged the basic structure doctrine and its equivalents on democratic grounds. Scholars including Mark Tushnet and Richard Albert have argued that judicial enforcement of amendment limits is in tension with democratic self-governance: if the people wish to change their constitution, including its most fundamental features, why should judges be able to prevent them? Albert's sophisticated analysis of constitutional amendments in his book

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"Constitutional Amendments: Making, Breaking, and Changing Constitutions" develops a nuanced framework for evaluating when amendment limits are justified and when they unduly constrain democratic self-determination.

The response to this democratic challenge is that the constituent power, the power of the people acting in their founding constitutional capacity, is distinct from the constituted power of the legislature, even when the legislature exercises its amendment authority with a supermajority. A parliament amending the constitution, even by a two-thirds majority, is not the same as the people acting in their constituent capacity. The parliament's amendment power is a delegated power, conferred by the constitution, and subject to its terms. If the constitution includes limits on the amendment power, those limits are themselves an expression of the constituent will of the people and bind subsequent parliaments.

In the context of Bangladesh, the debate over the validity of Article 7B and the broader doctrine of amendment limits has particular urgency because the Reform Commission established by the interim government in 2024 explicitly recommended the deletion of Articles 7A and 7B on the grounds that their presence in the constitution had been used by the Awami League to entrench its own political arrangements as constitutionally unamendable and to prevent future reform. This recommendation illustrates the double-edged character of amendment limits: they can protect genuine constitutional values against majoritarian manipulation, but they can also be used to entrench the preferences of whoever happens to be in power when the limits are adopted.

CHAPTER FIVE: THE CARETAKER GOVERNMENT CONTROVERSY -- DEMOCRACY, ELECTIONS, AND THE PROBLEM OF ELECTORAL INTEGRITY

5.1 The Problem of Electoral Administration in a Polarized Polity

One of the most persistent and practically consequential problems in Bangladesh's constitutional history has been the question of how to ensure genuinely free and fair elections in a political environment characterized by intense partisan rivalry, deep institutional distrust, and a strong tendency for whichever party controls the government to use state resources and institutions to influence electoral outcomes in its own favour. This problem is not unique to Bangladesh: electoral integrity is a central challenge for many developing democracies. But Bangladesh's experience with this problem has been unusually dramatic and has driven some of the most significant constitutional changes in the country's history.

The theoretical foundation for the concern about electoral integrity lies in the fundamental principle of democracy: that legitimate governmental authority derives from the free and equal choice of the governed. If elections are manipulated, coerced, or fraudulently conducted, the democratic mandate of the resulting government is compromised. This is not merely a normative concern but a practical one: governments that lack genuine democratic legitimacy tend to be less stable, less accountable, and more prone to authoritarian behaviour.

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The problem in Bangladesh was structural. The Westminster-style parliamentary system created a situation in which the incumbent government controlled the machinery of elections. The Prime Minister and cabinet controlled the civil service, including the district administration that played a crucial role in electoral logistics. The police and security forces were under the authority of the Home Ministry, which was a cabinet portfolio. The state-owned media, which until the liberalization of the media sector in the 1990s was the primary source of political information for most Bangladeshis, was also under government control. In these circumstances, genuinely impartial administration of elections was extremely difficult to achieve in practice, regardless of the formal rules.

The partisan character of elections became particularly acute during the periods of parliamentary democracy in the 1990s, when the Awami League and the Bangladesh Nationalist Party (BNP) competed intensely for power in a system where the stakes of winning or losing were extremely high. Both parties, when in government, were accused of using state resources for political advantage and of allowing partisan considerations to influence the conduct of elections. When either party was in opposition, it accused the other of electoral fraud and threatened to boycott elections that it declared could not be free and fair under the incumbent government's administration.

5.2 The Thirteenth Amendment: Inventing the Caretaker Government

The constitutional response to this problem was the invention of a unique institution: the non-party caretaker government. Under the Thirteenth Amendment of 1996, the constitution was amended to provide that parliamentary elections would be conducted not under the authority of the outgoing elected government but under the authority of a neutral caretaker government. This caretaker government would be headed by a Chief Adviser who was to be the most recently retired Chief Justice of Bangladesh, supported by a team of advisers selected from civil society. The caretaker government would hold office from the dissolution of parliament until the new parliament convened after the election, a period expected to be approximately three months.

The Thirteenth Amendment was itself the product of intense political pressure. The BNP government of Prime Minister Khaleda Zia had refused to hold elections under a neutral caretaker arrangement despite sustained demands by the Awami League and a series of by-elections that the Awami League had boycotted or in which it had lost confidence in the fairness of the process. A mass movement demanding constitutional reform, including a multi-day general strike, was launched in 1994-1995. Eventually, the BNP government was forced to yield, and the Thirteenth Amendment was passed in March 1996, just weeks before the parliamentary elections of that year.

The caretaker government institution was, in many ways, a creative constitutional solution to a real problem. It addressed the structural conflict of interest inherent in having an elected government administer the elections in which it was a contestant. It provided a mechanism for ensuring that the state machinery, at least at the highest levels, was under the control of neutral figures during the election period. And it built on an existing informal practice of outgoing governments transferring administrative responsibility to a caretaker arrangement during election periods, giving that practice constitutional form and legal force.

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The constitutional design of the caretaker government also drew on comparative experience from other parliamentary democracies. In countries including India, Pakistan, and other Westminster-style systems, conventions and formal rules about the conduct of caretaker governments during election periods had developed to manage the transition between governments. The Bangladesh innovation was to create a constitutional caretaker arrangement that was explicitly non-partisan and that was headed not by the outgoing Prime Minister but by a retired judicial figure specifically chosen to be above the partisan fray.

The elections of 1996, 2001, and 2008 conducted under the caretaker government arrangement were widely regarded as the most credible elections in Bangladesh's history, a striking contrast with the elections of 1973 and 1988 that had been conducted under the incumbent government and that were widely regarded as fraudulent, and with the election of 1996 held under the BNP government before the Thirteenth Amendment, which the Awami League had boycotted. The caretaker government system appeared to have solved a fundamental problem of Bangladesh's democratic life.

5.3 The Fifteenth Amendment and the Abolition of the Caretaker Government

The caretaker government system was abolished by the Fifteenth Amendment of 2011, enacted by the Awami League government of Sheikh Hasina. The Supreme Court of Bangladesh, in a case known as the Thirteenth Amendment case, had declared the caretaker government system unconstitutional, holding that it was incompatible with the principle of democracy in the constitution because it placed governmental power temporarily in the hands of an unelected body. The court's majority held that the caretaker government, by its nature, was incompatible with the democratic principle because democracy requires that those who govern must be accountable to the electorate, a requirement that an appointed caretaker government cannot satisfy.

The Fifteenth Amendment, relying on the court's holding, abolished the caretaker government system. But the manner in which this was done was deeply controversial. The court's decision had itself recommended that the caretaker system be maintained for two more election cycles, acknowledging the practical need for a transitional period during which alternative mechanisms for ensuring electoral integrity could be developed. The Awami League government ignored this recommendation and abolished the system immediately, without establishing any credible alternative mechanism.

The subsequent elections of 2014 and 2018, conducted under the incumbent Awami League government, were widely regarded as deeply flawed. The 2014 elections were boycotted by the BNP and many other opposition parties, resulting in 153 of 300 constituencies returning Awami League candidates unopposed, since no other party contested. The 2018 elections were marred by credible reports of ballot stuffing, voter intimidation, and the manipulation of vote counts, and they resulted in an Awami League victory of implausible magnitude: the party was credited with winning 289 of 300 directly elected seats. International observers raised serious concerns about the conduct of both elections.

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The abolition of the caretaker government system, and the subsequent conduct of elections without meaningful opposition, played a significant role in delegitimizing the Awami League government and contributing to the political crisis that exploded in 2024. By dismantling the institutional mechanism that had made elections credible, the Awami League removed the primary check on its own electoral dominance and created a constitutional framework in which democratic accountability existed largely on paper.

The December 2024 judgment of the High Court Division of the Supreme Court, which declared the Fifteenth Amendment partially illegal and restored the caretaker government provision, represented the courts' attempt to correct this constitutional error. But by that point, the constitutional order had already collapsed under the weight of the 2024 uprising, and the question of whether to restore or reform the caretaker government system had become part of the broader constitutional reform agenda rather than a matter of judicial enforcement.

5.4 Comparative Models of Electoral Administration

The Bangladesh experience with the caretaker government system raises important questions about the broader challenge of managing the conflict of interest inherent in having incumbent governments administer their own elections. This challenge is not unique to Bangladesh, and comparative constitutional law offers a range of different institutional responses.

Some countries have addressed the problem through the creation of genuinely independent electoral commissions with constitutionally guaranteed autonomy. India's Election Commission is perhaps the most celebrated example in South Asia: it has developed a reputation for electoral professionalism and independence that has made it one of the most trusted institutions in Indian democracy, despite operating in a highly competitive and frequently contentious political environment. The success of the Indian model suggests that an independent electoral commission, properly designed and staffed with genuine professionals who are insulated from political pressure, can provide credible electoral administration without the need for a special caretaker government arrangement.

South Africa's Independent Electoral Commission, established as one of the "Chapter 9 institutions" of the 1996 constitution, provides another model. The Chapter 9 institutions, which include the Electoral Commission, the Public Protector, the Human Rights Commission, the Gender Commission, and the Auditor-General, among others, were designed as permanent constitutional structures for safeguarding democratic governance between elections. They are characterized by independence from the executive, constitutional entrenchment, and accountability to Parliament rather than to the government. This framework provides an alternative to the ad hoc caretaker government model by creating permanent institutional guarantors of democratic accountability.

The Constitutional Reform Commission in Bangladesh proposed a National Constitutional Council as a "meta-guarantor" institution that would oversee the appointment of members of key constitutional bodies including the Election Commission, and that would serve as a framework for managing the selection of the Chief Adviser of any caretaker government. This proposal draws inspiration from both the South African model of chapter institutions and from the

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Norwegian and Scandinavian traditions of consensus-based governance, in which cross-party mechanisms are used to ensure that key institutional appointments are made on the basis of merit and competence rather than partisan affiliation.

The July Charter of 2025, signed by the interim government and 24 political parties, includes among its most important proposals the restoration of the caretaker government system in some form, alongside a reformed Election Commission with greater independence. A referendum on these proposals was held on February 12, 2026, alongside the general elections. The outcome of that referendum will determine whether Bangladesh can finally establish a durable constitutional framework for genuine electoral competition.

CHAPTER SIX: THE JUDICIARY AS GUARDIAN AND CAPTIVE -- JUDICIAL INDEPENDENCE, POLITICAL INTERFERENCE, AND THE STRUGGLE FOR THE RULE OF LAW

6.1 Constitutional Design for Judicial Independence

The judiciary's independence from political influence is widely recognized as one of the essential features of a constitutional democracy governed by the rule of law. The principle of judicial independence serves several important functions. It ensures that disputes between citizens and the state are resolved by impartial adjudicators rather than by those with an interest in the outcome. It provides a check on the executive and legislative branches by ensuring that their acts are subject to legal scrutiny by an institution that is not subject to their control. It protects individual rights by ensuring that the courts that adjudicate rights claims are not susceptible to political pressure. And it contributes to the predictability and consistency of legal decision-making, which are essential prerequisites for economic development and social order.

The Bangladesh Constitution establishes a formal framework for judicial independence that is, on paper, reasonably robust. The Supreme Court is established in Part VI of the constitution as a unified court with an Appellate Division and a High Court Division. Supreme Court judges are appointed by the President, but in practice on the advice of the Prime Minister, after consultation with the Chief Justice. Judges enjoy security of tenure: they hold office until they reach the mandatory retirement age (currently 67 years), and can only be removed by the Supreme Judicial Council, a body consisting of the Chief Justice and the two most senior judges of the Appellate Division, after an inquiry into misconduct or incapacity.

This formal framework appears to provide genuine protection for judicial independence. But as with many provisions of the Bangladesh Constitution, the formal text significantly understates the degree to which political considerations have in practice influenced the judiciary. The appointment process, in particular, has been a persistent source of concern. Since judges are appointed on the advice of the Prime Minister, in practice the composition of the judiciary has tended to reflect the political preferences of whichever party happened to control the government at the time of appointment. Governments of both major parties have been accused of appointing

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judges who were sympathetic to their interests, and of passing over more qualified candidates who were perceived as politically unreliable.

6.2 The Sixteenth Amendment and the Attack on Judicial Independence

The most direct assault on judicial independence in Bangladesh's constitutional history came with the Sixteenth Amendment of 2014, which transferred the power to remove Supreme Court judges from the Supreme Judicial Council to Parliament. Under the Sixteenth Amendment, judges of the Supreme Court could be removed by a resolution of Parliament if allegations of incapability or misconduct were proved to the satisfaction of the legislature. This amendment effectively made Supreme Court judges accountable to the legislative majority and therefore, in a system of parliamentary government with strong party discipline, to the executive.

The Sixteenth Amendment was struck down by the Supreme Court itself in 2016, in a judgment that represented one of the most important assertions of judicial independence in Bangladesh's constitutional history. The court held that the amendment was unconstitutional because it violated the doctrine of separation of powers and undermined the independence of the judiciary, which was a basic feature of the constitution protected by the basic structure doctrine. The Appellate Division upheld this judgment on appeal, and in 2024, after the fall of the Hasina government, the Appellate Division further confirmed its position in a review petition.

The significance of the Sixteenth Amendment case extends beyond its specific holding. It demonstrated that the Supreme Court of Bangladesh was capable, under certain conditions, of asserting its independence against legislative encroachment, even when the legislature was controlled by a government that had clearly intended the amendment as a mechanism for controlling the judiciary. It also illustrated the importance of the basic structure doctrine as a constitutional bulwark against politically motivated constitutional amendments: without the basic structure doctrine, there would have been no constitutional basis for the court to strike down a formally enacted constitutional amendment.

However, the limits of judicial independence in Bangladesh were also dramatically illustrated by the trajectory of judicial decision-making during the Hasina years. While the court occasionally asserted itself on significant constitutional questions, as in the Sixteenth Amendment case, it was far more often deferential to the executive. Cases involving the detention of political opponents under the Digital Security Act 2018 and its predecessor, the Information and Communication Technology Act 2006, were regularly decided in ways favorable to the government. Challenges to controversial governmental actions were frequently dismissed on procedural grounds or decided with minimal engagement with the substantive constitutional issues.

6.3 The Digital Security Act and the Criminalisation of Dissent

No analysis of the Bangladesh Constitution's treatment of fundamental rights can ignore the Digital Security Act (DSA) of 2018 and its predecessor, the Information and Communication Technology Act (ICT Act). These laws represent the most significant legislative threat to freedom of expression and press freedom in Bangladesh's recent history, and their use by successive governments, particularly the Hasina government, to suppress political opposition and

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silence critics illustrates the gap between the constitution's formal guarantees and the practical reality of rights protection in Bangladesh.

The ICT Act 2006, particularly its Section 57, created broadly worded criminal offenses for the publication of information through digital media that was found to be offensive, defamatory, or threatening to national security. The vagueness of these provisions, combined with the use of pre-trial detention for extended periods in many cases, made the law an effective tool for intimidating journalists, bloggers, political opponents, and civil society activists. The Digital Security Act 2018 extended and in some respects intensified these provisions, creating new offences that covered a wide range of online communications and providing for significant penalties including lengthy prison sentences.

The constitutional challenge to these laws under Article 39's guarantee of freedom of thought and conscience and of speech raises fundamental questions about the relationship between constitutional rights and their legislative limitations. As we noted in our discussion of the fundamental rights provisions, Article 39(2) permits the legislature to impose "reasonable restrictions" on freedom of expression in specified categories including the security of the state and public order. The question before the courts, which they never adequately addressed during the Hasina period, was whether the DSA's sweeping provisions were genuinely "reasonable restrictions" within the meaning of Article 39(2), or whether they went so far beyond what was necessary and proportionate to protect legitimate state interests that they effectively nullified the constitutional guarantee itself.

The European Court of Human Rights' proportionality doctrine, developed in the context of the European Convention on Human Rights, provides a useful analytical framework for this question. Under the proportionality doctrine, a limitation on a fundamental right must pursue a legitimate aim, must be necessary to achieve that aim (there must be no less restrictive alternative), and the restriction must not be disproportionate to the aim pursued. Applied to the DSA, it is difficult to see how provisions criminalizing the publication of "offensive" material online, with no clear definition of what counts as offensive and with the potential for lengthy pre-trial detention, could satisfy the proportionality requirement. The law's practical effect was not to protect any identifiable legitimate state interest but to chill legitimate political speech, journalism, and civil society advocacy.

The Cyber Security Act of 2023, which replaced the DSA, retained many of its most problematic features while making some marginal improvements. Critics including Amnesty International, Human Rights Watch, and local civil society organizations argued that the new law failed to address the fundamental constitutional problems of the DSA and continued to pose a severe threat to freedom of expression in Bangladesh.

6.4 Judicialization of Politics and Its Discontents

The increasing reliance on courts to resolve political disputes, a phenomenon that scholars have termed the "judicialization of politics," has been both a feature and a problem in Bangladesh's constitutional development. On one hand, the referral of fundamentally political questions to the courts provides a peaceful and constitutionally regulated mechanism for dispute resolution that is

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preferable to extra-constitutional alternatives. The Anwar Hossain Chowdhury case, the Thirteenth Amendment case, the Sixteenth Amendment case, and numerous other decisions have addressed questions that were centrally political in character by applying constitutional standards.

On the other hand, the judicialization of politics creates several risks. It places the judiciary in a politically exposed position that can compromise its appearance of impartiality and generate backlash from the political branches. It can lead to inconsistent decision-making as courts adjust their constitutional interpretations to avoid political conflict. And it can create the false impression that constitutional questions are primarily legal questions to be resolved by judges, obscuring the fundamentally political character of constitutional life and the importance of democratic deliberation in resolving constitutional disputes.

The Bangladesh experience illustrates both the potential and the limits of judicialization as a mechanism for constitutional development. The courts' willingness to enforce the basic structure doctrine against formally enacted constitutional amendments represents an admirable exercise of judicial independence. But the courts' consistent failure to enforce the constitution against the executive on questions of fundamental rights protection, electoral integrity, and press freedom demonstrates that judicial independence is not enough by itself to maintain constitutionalism. Courts can serve as guardians of the constitution only when they possess not only formal independence but also the political courage and institutional capacity to enforce constitutional norms against those in power.

CHAPTER SEVEN: THE CRISIS OF FUNDAMENTAL RIGHTS -- FROM CONSTITUTIONAL PROMISE TO PRACTICAL REALITY

7.1 The Architecture of Fundamental Rights in the Bangladesh Constitution

The fundamental rights provisions of the Bangladesh Constitution, contained in Part III (Articles 26 to 47A), constitute the document's most important human rights commitments. They represent the constitution's promise to every citizen that certain domains of life will be protected from governmental interference, and that the coercive power of the state will be exercised only within boundaries defined by law and consistent with human dignity.

The rights guaranteed in Part III fall into several categories. Civil and political rights include the right to equality (Article 27), freedom from discrimination (Article 28), rights in criminal proceedings (Articles 31-35), and the various freedoms of movement, assembly, association, thought, conscience, speech, and religion (Articles 36-41). Economic and social rights include the right to property (Article 42). The constitution also guarantees the right to enforce fundamental rights through constitutional remedies (Article 44), a meta-right that gives practical effect to the others.

The structure of these rights provisions reflects the influence of both the Indian Constitution and international human rights instruments. The Universal Declaration of Human Rights, adopted in

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1948, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights all influenced the thinking of the Bangladesh drafters. Bangladesh subsequently ratified both international covenants, creating international legal obligations that reinforce and in some respects extend the constitutional rights framework.

However, the practical effectiveness of the fundamental rights provisions depends on several factors that go beyond the text of the constitution itself. These include the quality and independence of the courts that adjudicate rights claims, the culture of constitutionalism among governmental officials and the broader public, the existence of a legal profession capable of identifying and arguing constitutional issues, and the political will to enforce constitutional standards even when they are inconvenient for the government of the day. In Bangladesh, each of these factors has been seriously deficient at various points in the country's constitutional history.

7.2 The Equality Provisions and Their Systemic Failures

Articles 27 and 28 of the constitution establish the principles of equality before law and freedom from discrimination. Article 27 states that all citizens are equal before the law and entitled to equal protection of the law. Article 28 provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. These are fundamental commitments of a constitutional democracy, and their practical enforcement is a central test of whether Bangladesh's constitutional framework delivers on its promises.

The equality provisions have been tested in a range of contexts, including cases involving access to public employment (governed by Article 29), property rights of women, the rights of religious minorities, and the rights of indigenous peoples. The record is mixed at best. Some important victories have been won: courts have occasionally struck down discriminatory legislation and administrative practices on grounds of violation of the equality provisions. But systematic discrimination against religious minorities, indigenous peoples, and women has persisted throughout the constitution's history, often with the complicity of the state.

The quota controversy that precipitated the 2024 mass uprising is illustrative. The reservation of government jobs for the descendants of freedom fighters, which had been in place in various forms for decades, was challenged on grounds of inconsistency with the equality provisions of the constitution. The protesters argued that merit, not descent, should determine access to public employment, and that the quota system violated the constitutional guarantee of equal opportunity. The Supreme Court eventually issued a ruling significantly reducing the quotas, but the government's initial response to the protest, which involved violent suppression and the deaths of hundreds of protesters, itself represented a catastrophic violation of the fundamental rights of assembly, protest, and personal security.

The treatment of religious minorities, including Hindus, Christians, and Buddhists who together make up perhaps 10 percent of Bangladesh's population, has been a persistent source of constitutional concern. Despite the formal guarantee of non-discrimination on grounds of religion and the formal protection of equal rights in the practice of religion, religious minorities in Bangladesh have been subjected to systematic discrimination, periodic communal violence,

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land dispossession, and social marginalization throughout the country's history. The constitutional framework has not provided effective protection against these violations, and the courts have been inadequate in addressing systemic discrimination against minority communities.

The constitutional status of indigenous peoples, known in Bangladesh as adibasi or pahari communities, represents perhaps the starkest gap between constitutional promise and reality. The constitution, by defining Bangladesh's national identity in Bengali terms, effectively denied constitutional recognition to the distinct identities of the approximately 45 indigenous communities living within the national territory. The Chittagong Hill Tracts, which is home to the largest concentration of indigenous peoples, has been the site of a protracted armed conflict between indigenous groups and the Bangladesh military that resulted in large-scale human rights abuses, the displacement of hundreds of thousands of people, and the systematic violation of the indigenous communities' rights to land, culture, and self-governance.

The 1997 Chittagong Hill Tracts Peace Accord, which brought an end to the armed conflict, acknowledged some indigenous rights and committed the government to certain guarantees including land rights and regional autonomy. But the implementation of the Peace Accord has been consistently incomplete, and the indigenous communities of the Hill Tracts continue to suffer from land alienation, discrimination in public employment, and inadequate access to justice. The constitution's failure to adequately protect indigenous rights represents a fundamental gap in its commitment to equality and non-discrimination.

7.3 Freedom of Expression and the Press: Constitutional Promise Versus Authoritarian Practice

The constitutional guarantee of freedom of thought and conscience and of speech, contained in Article 39, is among the most important of the fundamental rights. A free press and the ability of citizens to speak, write, and organize without governmental interference are essential prerequisites for democratic accountability, and their absence is a reliable indicator of democratic decline.

Bangladesh's record on freedom of expression has been deeply troubling throughout its constitutional history. The periodic use of emergency provisions to suppress political opposition, the passage of laws including the Special Powers Act 1974 (which allowed detention without trial for extended periods), the ICT Act and the DSA, and the systematic harassment of journalists critical of the government have all contributed to an environment in which freedom of expression exists on paper but is frequently compromised in practice.

The Special Powers Act of 1974, which allowed preventive detention without trial for periods renewable almost indefinitely, was one of the most notorious instruments of political repression in Bangladesh's legal history. Thousands of political opponents, journalists, and critics were detained under this act during various periods of the country's history. While the act was nominally a response to security threats, it was routinely used against people who posed no security threat but were simply inconvenient for the government of the day. Its continued presence on the statute books, despite its obvious inconsistency with the constitutional guarantee

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of personal liberty, reflected the unwillingness of successive governments to surrender a tool of political repression that they found useful.

The pattern of press freedom violations during the Hasina period (2009-2024) was particularly systematic. Journalists were routinely subjected to arrest and prosecution under the DSA for reporting on corruption, questioning government policies, or expressing views critical of the government. Media organizations critical of the government were subjected to regulatory harassment, advertising boycotts by state-owned enterprises, and in some cases forced transfers of ownership to individuals with government connections. The result was a progressive chilling of the press that dramatically reduced the quality of public information and democratic debate in Bangladesh.

Freedom House, Reporters Without Borders, and other press freedom monitoring organizations consistently rated Bangladesh among the countries with the most constrained press freedom in the Asia-Pacific region during this period. The ranking of 165th out of 180 countries in the 2024 World Press Freedom Index represented one of the worst performances in the region and reflected the systematic erosion of press freedom under the Awami League government.

The constitutional challenge to these restrictions on press freedom requires applying the Article 39 guarantee in conjunction with the broader constitutional principles of democracy and the rule of law. The argument is that a democracy cannot function without a free press, because democratic accountability requires that citizens have access to accurate information about their government's performance, and that press freedom is therefore not merely an individual right but a structural requirement of democratic governance. On this view, restrictions on press freedom do not merely violate individual rights but undermine the constitutional principle of democracy itself, making them unconstitutional even if they purport to serve other legitimate objectives.

CHAPTER EIGHT: POWER, POLITICS, AND THE PRIME MINISTER -- THE PROBLEM OF EXECUTIVE DOMINANCE

8.1 The Westminster System and Its South Asian Manifestations

The Bangladesh Constitution establishes what is nominally a Westminster-style parliamentary system, in which the Prime Minister is the head of government and is accountable to Parliament. But the version of parliamentarism that has developed in Bangladesh, as in several other South Asian countries, has evolved in directions that significantly departed from the Westminster model and that have produced a form of executive dominance that critics have described as "elected authoritarianism" or "competitive authoritarianism."

The theoretical framework of Westminster parliamentarism was designed for conditions quite different from those in Bangladesh. The Westminster system developed in Britain over centuries in a specific political and cultural context characterized by strong parliamentary traditions, a well-developed constitutional culture, an independent judiciary, a free press, a professional civil service, and a pattern of peaceful alternation of power between competing parties. The

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transplantation of this system to post-colonial settings, including Bangladesh, occurred in conditions where many of these prerequisites were absent or underdeveloped.

In Bangladesh, the parliamentary system has been characterized by several features that have contributed to executive dominance. The first is the weakness of Parliament as an institution for holding the executive accountable. Despite the constitutional requirement of cabinet accountability to Parliament, the legislature in Bangladesh has consistently failed to function as a genuine check on executive power. Parliamentary debates are often poorly attended and lack substantive engagement with policy. Question time, which in the Westminster model is an important mechanism for holding ministers accountable, has frequently been treated as a formality. Parliamentary committees, which in more effective parliamentary systems serve as important forums for legislative oversight, have been relatively weak and have often been dominated by government appointees.

The second feature is the strong party discipline enforced by Article 70 of the constitution, which requires members of Parliament to vacate their seat if they vote against their party or resign from it. This provision was included in the original 1972 constitution with the ostensible purpose of promoting governmental stability, but its effect has been to make individual members of Parliament almost entirely dependent on their party leadership and therefore on the Prime Minister who leads the government. The result is that Parliament, instead of being a diverse forum for deliberation and oversight, functions as a rubber stamp for the party leadership's decisions.

The third feature is the constitutional concentration of effective appointment powers in the Prime Minister's hands. While the President formally makes many key appointments including the appointment of the Chief Justice and other Supreme Court judges, ministers, the heads of constitutional bodies including the Election Commission and the Anti-Corruption Commission, these appointments are in practice made on the advice of the Prime Minister. This means that the Prime Minister effectively controls the staffing of the key institutions that are supposed to check and balance the executive.

8.2 The Emergency Provisions and the Suspension of Rights

Part IXA of the Bangladesh Constitution, added by the Fourth Amendment and subsequently modified, governs the state of emergency. The emergency provisions allow the President, on the advice of the Prime Minister, to declare a state of emergency if the security or economic life of Bangladesh is threatened. During a state of emergency, certain fundamental rights can be suspended, and the President is given legislative powers that bypass Parliament.

The emergency provisions represent a significant potential exception to the ordinary constitutional framework, and their availability creates both practical risks and jurisprudential problems. The risk is that emergency powers, once invoked, can be used not to address genuine national crises but to suppress political opposition and concentrate power in the executive. This is precisely what happened during the military-backed emergency government of 2007-2008, when a state of emergency was declared and a military-backed caretaker government ruled the

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country for nearly two years, claiming to be implementing an anti-corruption reform agenda but in practice exercising powers far beyond what any genuine emergency required.

The jurisprudential problem is that the suspension of fundamental rights during emergencies conflicts with the international human rights principle that certain rights are non-derogable: they cannot be suspended even in genuine emergencies. The International Covenant on Civil and Political Rights, which Bangladesh has ratified, establishes a list of non-derogable rights in Article 4(2) that includes the right to life, freedom from torture, freedom from slavery, freedom from retroactive criminal law, and the rights to recognition as a person before the law and to freedom of thought, conscience, and religion. Bangladesh's emergency provisions do not clearly respect these non-derogability requirements, creating a potential conflict between domestic constitutional law and international human rights law.

8.3 The Sheikh Hasina Period: Democratic Erosion and Constitutional Capture

The period of Sheikh Hasina's governance from 2009 to 2024 represents the most thoroughly documented case of democratic backsliding and constitutional capture in Bangladesh's history. Using the formal mechanisms of the constitutional system, including parliamentary majorities, constitutional amendments, judicial appointments, and the suppression of opposition through legal means, the Awami League government progressively dismantled the institutional checks and balances that distinguish constitutional democracy from competitive authoritarianism.

Scholars of democratic decline have developed the concept of "constitutional retrogression" or "autocratization" to describe this process: the gradual erosion of democratic norms and institutions through legally sanctioned means rather than through dramatic coups or explicit abolition of democratic procedures. Tom Ginsburg and Aziz Huq, in their book "How Democracies Die" and their subsequent scholarship, identify several characteristic features of this process: packing constitutional courts with loyal judges, using legal mechanisms to harass and weaken political opponents, restricting the freedom of the press through selective enforcement of broadly worded laws, manipulating electoral rules to entrench the dominant party's advantage, and gradually reducing the space for political opposition.

All of these features were present in Bangladesh during the 2009-2024 period. The Fifteenth Amendment, which abolished the caretaker government system and entrenched the Awami League's electoral advantages, was the most important constitutional step in this process. The appointment of loyal judges to the Supreme Court, which affected the court's willingness to challenge executive actions, was another. The use of the DSA to silence journalists and critics was a third. The refusal to allow meaningful political competition in the 2014, 2018, and 2024 elections was the culminating act.

The 2024 mass uprising that brought down the Hasina government was, in this light, not merely a protest against a specific policy (the quota system for government jobs) but a broader rejection of a constitutional order that had been progressively hollowed out over fifteen years of Awami League rule. The protesters who took to the streets in the summer of 2024 were responding to the accumulated frustrations of a system in which constitutional rights existed on paper but not in practice, in which elections were rituals rather than genuine choices, and in which the state

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treated citizens as subjects to be managed rather than as sovereign individuals whose consent was the source of governmental authority.

CHAPTER NINE: THE JULY-AUGUST 2024 UPRISING -- A CONSTITUTIONAL WATERSHED

9.1 The Quota Movement as Constitutional Protest

The immediate trigger of the 2024 mass uprising was the quota reform movement: the demand by university students that the government reform the system of reserving 56 percent of government jobs for various categories of applicants, including 30 percent for the descendants of freedom fighters. The students argued that this system violated the constitutional principle of equality of opportunity in public employment (Article 29) and discriminated against students from ordinary families who had to compete on merit for the remaining 44 percent of positions.

The constitutional dimension of the quota dispute was significant. Article 29(1) of the constitution guarantees equality of opportunity for all citizens in respect of appointment to any office in the service of the Republic. Article 29(2) prohibits the state from discriminating against any citizen in respect of any employment or office on grounds only of religion, race, caste, sex or place of birth. And Article 29(3) provides that nothing in Articles 29(1) and 29(2) shall prevent the state from making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic.

The constitutional question was whether the freedom fighter quota system fell within the scope of the Article 29(3) exception. The descendants of freedom fighters are not a "backward section of citizens" in any meaningful sense: they are not economically disadvantaged, not educationally deprived, not systematically excluded from public life. The argument for the quota rested on a different principle: the idea that the state should honour and reward the sacrifice of those who fought for Bangladesh's independence by providing advantages to their descendants. This is a form of historical recognition rather than a remedial measure for social disadvantage, and it is not obvious that it falls within the scope of the Article 29(3) exception.

The Supreme Court, in its ruling on the quota case during the period of the uprising, significantly reduced the freedom fighter quota from 30 percent to 5 percent and eliminated several other categories of reservation, ruling that the unreformed quota system was not consistent with the constitutional requirements. This was an important constitutional decision, but it came too late to prevent the broader political crisis that the government's violent response to the protests had precipitated.

9.2 The Constitutional Significance of the Popular Uprising

Beyond the specific quota issue, the 2024 uprising had profound constitutional significance in several dimensions. It was, first, a dramatic demonstration of the people's constituent power: the

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capacity of the sovereign people to assert their fundamental political will in ways that transcend the ordinary legal and constitutional framework. When hundreds of thousands of citizens took to the streets despite government curfews, internet shutdowns, and the use of lethal force against protesters, they were exercising precisely the kind of extraordinary popular mobilization that Ackerman's theory of constitutional politics identifies as the foundation of higher-law making authority.

The uprising fundamentally delegitimized the constitutional order that had developed under the Hasina government. It exposed, more dramatically than any academic critique could, the gap between the constitutional guarantees of democratic governance, fundamental rights, and equality under law on one hand, and the reality of a constitutional system that had been captured by a dominant party and used to entrench its own power on the other. The students who marched with signs demanding not just quota reform but fundamental systemic change were articulating a constitutional critique: that the Bangladesh Constitution, as operated by the Hasina government, had failed to deliver the democratic and rights-protective governance that it promised.

The uprising also raised profound questions about the legal basis of the subsequent political transition. When the military mediated Sheikh Hasina's resignation and departure from Bangladesh, and when a new interim government was formed under Professor Muhammad Yunus, the constitutional framework provided no clear guidance for these events. The constitution does not contemplate a situation in which the Prime Minister resigns and there is no parliament to choose a replacement: the Fifteenth Amendment's abolition of the caretaker government provision meant that there was no constitutional mechanism for the formation of the interim government that actually came to power on August 8, 2024.

The courts addressed this gap through the doctrine of necessity, holding that the extraordinary circumstances created by the mass uprising and the collapse of the elected government created a constitutional vacuum that justified the formation of an interim government outside the normal constitutional framework. This application of the doctrine of necessity, a doctrine with roots in international constitutional law and comparative jurisprudence, provided a legal foundation for the interim government but also acknowledged its extra-constitutional character. The doctrine of necessity in constitutional law holds that in extreme circumstances, where the normal constitutional order has broken down and where action is necessary to prevent a greater constitutional catastrophe, courts may recognize the validity of governmental acts that would otherwise be unconstitutional.

9.3 Theories of Constitutional Moments and Revolutionary Constitutionalism

The 2024 uprising and its constitutional aftermath can be understood through several theoretical lenses that illuminate different aspects of the constitutional situation.

Bruce Ackerman's theory of constitutional moments provides one lens. In Ackerman's framework, constitutional moments are periods of extraordinary popular engagement with constitutional questions, during which the normal politics of interest-group competition gives way to a higher-order politics of fundamental constitutional debate. These moments, when they result in durable constitutional change, can legitimate new constitutional arrangements with a

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democratic authority that transcends the ordinary legislative process. The 2024 uprising has many of the characteristics of a constitutional moment in Ackerman's sense: it involved broad popular mobilization, it addressed fundamental constitutional questions about democratic governance and equal rights, and it produced a situation in which the basic framework of constitutional life in Bangladesh was open to renegotiation.

Ruti Teitel's theory of transitional justice and transitional constitutionalism provides another lens. Teitel argues that constitutions adopted in the aftermath of political transitions, including transitions from authoritarian to democratic government, have a distinctive character that reflects the specific challenges of the transitional moment. They must simultaneously address the injustices of the past, establish a new framework for the future, and manage the political tensions of the present. The Bangladesh constitutional reform process of 2024-2026 fits this description precisely: it is attempting to design constitutional institutions that will prevent a recurrence of the authoritarian governance of the Hasina period while building on the achievements of Bangladesh's constitutional history and managing the extremely difficult politics of a deeply divided political landscape.

Jon Elster's work on constitutional deliberation and the paradoxes of constitutional design raises important questions about the legitimacy of constitution-making in revolutionary settings. Elster argues that constitutions written in the heat of revolutionary moments tend to incorporate the biases and blind spots of the revolutionary coalition, and that the quality of constitutional deliberation is significantly affected by the conditions under which it occurs. The Bangladesh Constitution Reform Commission, established in October 2024 and submitting its report in January 2025, worked in conditions of intense political excitement and uncertainty. Its recommendations reflect the intellectual commitments of a particular reform coalition, and the question of whether those recommendations represent a genuine constitutional consensus or merely the preferences of one side of a political divide is one that the subsequent negotiation process has struggled to answer.

CHAPTER TEN: THE CONSTITUTIONAL REFORM COMMISSION AND THE JULY CHARTER -- PROPOSALS, CONTROVERSIES, AND THE PATH FORWARD

10.1 The Constitutional Reform Commission: Mandate, Composition, and Process

The Constitutional Reform Commission (CRC) was established by the interim government on September 11, 2024, as one of six initial reform commissions covering the constitution, the electoral system, the judiciary, the Anti-Corruption Commission, the police, and public administration. Four additional commissions were later established covering healthcare, mass media, labor rights, and women's rights. The CRC was given the mandate of identifying weaknesses and loopholes in the existing constitution that had facilitated authoritarianism and undemocratic practices, and of recommending reforms to address them.

The CRC was chaired by Professor Ali Riaz, a distinguished Bangladeshi-American political scientist at Illinois State University, and composed of nine members drawn from academia, law,

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and civil society. The choice to head the commission with an academic-diaspora figure was significant: it signaled the interim government's desire to bring fresh intellectual perspective to the reform process while also raising questions about the extent to which someone based primarily outside Bangladesh could adequately understand the nuances of its constitutional culture and political landscape.

The CRC worked remarkably quickly, submitting its comprehensive report on January 15, 2025, having received over 50,000 submissions from individuals and political entities and having reviewed 120 constitutions worldwide. This rapid process was both impressive and concerning: impressive in its ambition and scope, concerning in the limited time available for genuine deliberation on proposals of fundamental constitutional significance.

The most significant limitation of the CRC's process was its relationship with the major political parties. The Awami League, Bangladesh's largest political party by historical voting share, was excluded from meaningful participation in the reform process. The BNP participated in some consultations but ultimately expressed dissent on several key proposals, most notably the mechanism for selecting the Chief Adviser of the caretaker government. Other parties, including the Jamaat-e-Islami (which the Awami League government had banned and which the interim government had effectively revived), participated in the National Consensus Commission process that followed the CRC's report.

The exclusion or limited participation of major political actors raises fundamental questions about the democratic legitimacy of the reform process. Even if the CRC's proposals are substantively superior to the existing constitutional arrangement, their implementation through a process that marginalizes significant political forces creates risks for constitutional sustainability. A constitution that is imposed on a major political force rather than negotiated with it may be formally valid but practically unstable.

10.2 The Major Reform Proposals: A Critical Analysis

The CRC's proposals covered a very wide range of constitutional issues, and the July Charter of 2025, which distilled the reform recommendations through a process of political negotiation, endorses approximately 80 proposals for reform, of which nearly 50 are constitutional in nature. A comprehensive analysis of all these proposals would require a separate volume. Here we focus on the most significant proposals and their jurisprudential and political implications.

The first and perhaps most important proposal is the creation of a bicameral legislature, replacing the existing unicameral Jatiya Sangsad with a two-chamber parliament consisting of a lower house and a Senate. The lower house would have 400 members, of whom 300 would be directly elected from territorial constituencies and 100 would be women members. The Senate would have 105 members, of whom 100 would be determined by proportional representation based on the national vote share and 5 would be presidential nominees. The lower house would be the primary legislative chamber, while the Senate would serve as a revising chamber with specific roles in constitutional amendment and oversight.

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The theoretical case for bicameralism in Bangladesh is strong. A second chamber provides an additional opportunity for legislative scrutiny, can represent different constituencies and perspectives than the directly elected lower house, and creates a structural check on the concentration of power in the government of the day. The proposal for proportional representation in the Senate is particularly significant: by allocating Senate seats in proportion to national vote shares, rather than through winner-take-all territorial constituencies, the system would give voice to political parties that win substantial support nationally but few constituency seats under the first-past-the-post system used for lower house elections.

The comparative evidence on bicameralism is broadly supportive of the reform. Countries with effective second chambers, including Germany with its Bundesrat, India with its Rajya Sabha, and the United States with its Senate, generally demonstrate stronger legislative deliberation and more effective oversight of the executive than unicameral systems. However, the design of the second chamber matters enormously: a weak second chamber with limited powers can be easily ignored, while a second chamber that is too powerful can create deadlock and governmental paralysis. The specific design of the proposed Bangladesh Senate, and in particular the balance of powers between the two chambers, will be crucial to whether the bicameral system enhances or complicates democratic governance.

The second major proposal is the establishment of term limits for the Prime Minister and the President. The CRC recommended that both offices be limited to two terms, whether consecutive or non-consecutive, of four years each. This proposal directly addresses the constitutional mechanism through which Sheikh Hasina's government entrenched itself: by remaining in office for four consecutive terms (from 2009 to 2024, with the period from 2014 to 2018 involving a government formed without genuine electoral competition), the Awami League was able to progressively consolidate its control over the state apparatus in ways that made genuine democratic alternation increasingly difficult.

Term limits are a well-established mechanism in comparative constitutional design for preventing the accumulation of power in a single office over extended periods. They are used in a majority of presidential systems and in an increasing number of parliamentary systems. The rationale for term limits combines practical and philosophical considerations: practically, they ensure regular turnover in leadership, bringing fresh perspectives and preventing the ossification of political networks around a single leader; philosophically, they reflect the democratic principle that political power belongs not to individuals but to the people, and that individuals exercise it in trust on the people's behalf for defined periods.

However, term limits also have costs. They can prevent genuinely effective leaders from serving when the public would wish them to continue. They can create incentives for lame-duck behavior in the final term, as leaders who cannot be re-elected have reduced incentives to maintain public support. And they can be circumvented through constitutional amendments or the installation of proxy successors, as has happened in several African and Asian countries. The Bangladesh proposal for a two-term limit is a reasonable response to the specific problem of power concentration, but it should be understood as a complement to, rather than a substitute for, the broader institutional reforms needed to create genuine checks and balances.

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The third major proposal is the creation of a National Constitutional Council (NCC) as a meta-guarantor institution overseeing appointments to constitutional bodies and playing a role in the formation of the caretaker government. The NCC would be a multiparty body including representatives of the President, both houses of parliament (including opposition members), the judiciary, and civil society. It would be responsible for making or approving appointments to key constitutional bodies including the Election Commission, the Anti-Corruption Commission, the Human Rights Commission, and the appointment of the Chief Adviser of the caretaker government.

The NCC proposal draws on comparative experience with similar institutions in other constitutional systems. Sri Lanka's Constitutional Council, Pakistan's Judicial Commission of Pakistan, and similar bodies in other countries have attempted to depoliticize key appointments by creating cross-party mechanisms that require consensus or near-consensus rather than simple majority decision. The rationale is that appointments made through such mechanisms are more likely to be genuinely qualified and impartial, and are more likely to command broad public confidence.

The potential weakness of the NCC model is deadlock: if the NCC cannot reach the required consensus on an appointment, the constitutional machinery can be paralyzed. The CRC's proposals included fallback provisions for situations in which the NCC cannot agree, but the adequacy of those provisions, and in particular the BNP's dissent on the selection mechanism for the Chief Adviser, raises questions about whether the NCC can function effectively in a polarized political environment.

The fourth major area of reform proposals concerns the fundamental rights provisions. The CRC recommended the expansion of the scope of fundamental rights, including enhanced protections for economic and social rights, greater protection for the rights of indigenous peoples, the explicit recognition of the right to information, the right to a clean environment, and various other rights not currently included in Part III of the constitution. The commission also recommended the deletion of certain broadly worded exception clauses that have been used to justify restrictions on fundamental rights.

The proposal to expand the scope of fundamental rights reflects a global trend in constitutional design toward more comprehensive rights protection, including socio-economic rights. The South African Constitution of 1996, which is widely regarded as one of the most progressive rights documents in the world, includes extensive socio-economic rights including the right to housing, healthcare, food, water, and social security, and the South African Constitutional Court has developed a sophisticated jurisprudence for enforcing these rights through what it calls "reasonableness review." The Bangladesh proposals for enhanced social and economic rights would move the constitution in a similar direction, though the question of how such rights would be judicially enforced in a country with Bangladesh's level of economic development and institutional capacity is one that requires careful attention.

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10.3 The July Charter: Political Negotiation and Its Limits

The July Charter of 2025, signed on October 17, 2025 by the National Consensus Commission and 24 political parties, represents the outcome of a complex political negotiation process that sought to build consensus around a set of constitutional reforms. The charter's 80-plus proposals, drawing on the CRC's recommendations but modified through negotiation, provide the blueprint for the constitutional reforms that were put to a referendum on February 12, 2026.

The negotiation process that produced the July Charter illustrates both the possibilities and the limits of consensus-based constitutional reform. On the positive side, the charter represents a genuine attempt to build broad political support for constitutional reform rather than simply imposing a particular vision. The involvement of 24 political parties, including the BNP which is Bangladesh's principal opposition party, gives the charter a degree of multi-party endorsement that the CRC's recommendations alone could not have had. The principle that constitutional reform should be achieved through negotiation and agreement rather than through the imposition of one party's preferences is itself an important constitutional norm.

On the negative side, the charter is marked by significant dissent on important provisions, particularly from the BNP, which expressed disagreement with several key proposals including the selection mechanism for the Chief Adviser. The exclusion of the Awami League from the negotiation process, whatever the political justifications for that exclusion, means that a party that historically has commanded the support of a very significant portion of the Bangladeshi electorate was not party to the constitutional compact. If the Awami League eventually returns to political relevance, it may not feel bound by constitutional arrangements that were negotiated without its participation.

The referendum of February 12, 2026, held simultaneously with the general elections, asked Bangladeshi citizens whether they approved the implementation of the July National Charter (Constitutional Amendment) Implementation Order 2025. A "Yes" vote would trigger a process of incorporating the charter's proposals into the constitution, with a Constitution Reform Council composed of newly elected members of Parliament completing the constitutional amendments within 180 working days of its first session. The outcome of this referendum and the subsequent constitutional amendment process will be the most important development in Bangladesh's constitutional history since the adoption of the 1972 constitution itself.

CHAPTER ELEVEN: COMPARATIVE CONSTITUTIONAL LAW -- LESSONS FROM SOUTH ASIA AND BEYOND

11.1 Pakistan's Constitutional Lessons

Pakistan's constitutional history offers important lessons for Bangladesh, as the two countries share the experience of post-colonial constitutional design in a South Asian context and as Bangladesh was itself part of Pakistan until 1971. Pakistan's constitutional trajectory has been even more turbulent than Bangladesh's, marked by the abrogation of three constitutions (1956, 56 ©2026 S M Nazmuz Sakib. This work is licensed under a Creative Commons Attribution 4.0 International License.

1962, and 1972), four periods of direct military rule, and a pattern of oscillation between civilian and military governance that has seriously compromised democratic consolidation.

The most relevant lesson from Pakistan's constitutional experience for Bangladesh is the danger of writing a constitution that fails to adequately control the military as a political actor. In both countries, the military has played an outsized role in political life, often operating in ways that are not sanctioned by the constitutional text but that are enabled by the failure of civilian institutions to establish genuine authority over the armed forces. Pakistan's experience demonstrates that once the military becomes accustomed to involvement in political life, it is very difficult to demilitarize politics through constitutional provisions alone: the military retains the capacity to intervene even when the constitution prohibits it, and constitutional prohibitions on military intervention are only effective insofar as the military chooses to respect them.

The institutional design of Pakistan's judiciary, particularly the Supreme Court's development of an active role in constitutional politics, also offers comparative insights. The Pakistani Supreme Court's activism in cases involving the removal of civilian governments, the validation of military rule, and the disqualification of political leaders has generated considerable controversy and illustrates the risks of judicialization as a mechanism for managing political conflict in deeply divided societies.

11.2 India's Constitutional Experience

India's constitutional experience is probably the most directly relevant comparative reference point for Bangladesh, given the shared legal heritage, similar institutional structures, and the proximity of the two countries. The Indian Constitution of 1949, now more than 75 years old, has been amended over 100 times without losing its fundamental character as a democratic, secular, and federal document. This record of constitutional continuity, in contrast with Bangladesh's experience of constitutional upheaval, deserves careful study.

Several factors have contributed to India's greater constitutional resilience. The first is the federal structure, which distributes power between the central and state governments and creates a multiplicity of power centers that make total constitutional capture by any single political force more difficult. The second is the relatively robust tradition of judicial independence: the Indian Supreme Court, while subject to periodic criticism for excessive deference to the executive on some questions, has maintained a genuine capacity for independent decision-making on constitutional questions. The third is the vibrancy of Indian civil society, free press, and political opposition, which have served as important countervailing forces against executive excess.

However, India's more recent constitutional experience also provides cautionary lessons. The Modi government's use of constitutional mechanisms to centralize power, marginalize opposition, and reduce the space for dissent has prompted serious scholarly concern about democratic backsliding in what was long regarded as the world's largest and most durable democracy. Scholars including Pratap Bhanu Mehta, Milan Vaishnav, and Christophe Jaffrelot have documented a pattern of institutional erosion in India that shows significant similarities to the Bangladesh experience under Sheikh Hasina. This convergence suggests that the challenges facing South Asian constitutional democracies are structural rather than idiosyncratic: they

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reflect the specific configuration of incentives, institutions, and power relations in the region rather than the personal failings of individual leaders.

11.3 South Africa's Constitutionalism as a Model

South Africa's post-apartheid constitution, adopted in 1996 after an extraordinarily deliberate and inclusive drafting process, is widely regarded as one of the most admirable constitutional documents of the modern era. Its combination of a strong fundamental rights chapter with extensive socio-economic rights, a Constitutional Court with jurisdiction to enforce the entire constitution, a proportional representation electoral system, a comprehensive chapter of state institutions supporting constitutional democracy (the Chapter 9 institutions), and a carefully designed amendment procedure that requires different supermajorities for different categories of constitutional change has provided a framework for democratic governance that, while facing significant challenges, has proved far more resilient than most post-colonial constitutions.

Several features of the South African constitutional model are particularly relevant for Bangladesh. The Chapter 9 institutions, which include the Electoral Commission, the Human Rights Commission, the Gender Commission, the Public Protector, and the Auditor-General, provide permanent, constitutionally entrenched bodies for safeguarding democratic accountability and rights protection. These institutions operate independently of the executive and report to Parliament rather than to the government, providing systematic oversight without the ad hoc character of the caretaker government arrangement. The proposed National Constitutional Council in Bangladesh's reform proposals has some similarities to this model, though it would need to be carefully designed to avoid becoming simply another arena for political competition.

The South African Constitutional Court's jurisprudence on socio-economic rights offers a framework for enforcing socio-economic rights that has been influential worldwide. The court's development of a "reasonableness review" standard, under which government policies are assessed not for their success in delivering socio-economic outcomes but for whether they constitute a reasonable exercise of the government's constitutional obligations, provides a middle ground between the extremes of toothless non-enforcement and intrusive judicial micromanagement of social policy. This framework could be adapted for the enforcement of the socio-economic rights that the Bangladesh reform proposals seek to include in the constitution.

11.4 Sri Lanka's Constitutional Lessons: Crisis and Reform

Sri Lanka's constitutional experience is instructive precisely because it offers a cautionary tale about the consequences of failing to build adequate constitutional safeguards against executive dominance and the concentration of power. The Sri Lankan constitution's executive presidency, which concentrates enormous power in a single elected official, has been a persistent source of constitutional instability and has contributed to political crises including the devastating civil war between the Sinhala-majority government and the Tamil minority, the constitutional coup of 2018 in which President Sirisena attempted to dismiss the elected Prime Minister and Parliament, and the economic catastrophe of 2022 that led to mass protests and the flight of President Rajapaksa.

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Bangladesh's reform proposals, with their emphasis on term limits, bicameralism, and mechanisms for distributing power across multiple institutions, reflect an awareness of the lessons of Sri Lanka's experience: that concentrating power in a single office or individual, even through formally democratic means, creates risks of constitutional crisis that can be avoided through better institutional design. The specific challenge for Bangladesh is to design institutions that are robust enough to check executive power while being simple enough to function effectively in a country with limited institutional capacity and a deeply competitive political culture.

CHAPTER TWELVE: JURISPRUDENTIAL PHILOSOPHY AND CONSTITUTIONAL INTERPRETATION -- FRAMEWORKS FOR UNDERSTANDING THE BANGLADESH CONSTITUTION

12.1 Legal Positivism and Its Limits in Constitutional Adjudication

The major schools of jurisprudential philosophy each offer different perspectives on the interpretation and evaluation of the Bangladesh Constitution, and a sophisticated constitutional lawyer must be conversant with all of them. Legal positivism, which maintains that law is a social fact to be identified by reference to its sources rather than its moral content, provides the baseline for constitutional analysis: the constitution is law because it was enacted through the prescribed process, and its provisions mean what they say in their legal context. But pure positivism, as we have already noted, struggles to explain why formally enacted constitutional amendments that destroy fundamental constitutional values should be regarded as valid law.

H.L.A. Hart's sophisticated version of legal positivism, which distinguishes between the internal and external points of view on law, is more helpful. Hart recognizes that those who operate within a legal system, including judges and constitutional officials, typically do so from an internal point of view that involves acceptance of the system's rules as binding standards of conduct rather than merely as empirical regularities. This internal point of view is compatible with recognizing that some legal rules may be morally deficient, and that the question of whether to comply with a morally deficient legal rule is a moral rather than a legal question.

Applied to the Bangladesh Constitution, Hart's framework suggests that constitutional interpretation must be sensitive to both the formal legal content of the constitutional text and the moral commitments that underlie it. When constitutional provisions conflict with fundamental moral principles, as when the DSA's restrictions on freedom of expression conflict with the constitutional guarantee of Article 39, judges operating from an internal point of view are not limited to formal textual analysis but must engage with the moral dimensions of the constitutional commitment.

12.2 Dworkin's Rights-Based Constitutional Theory

Ronald Dworkin's theory of law as integrity offers a more explicitly value-laden approach to constitutional interpretation that has been enormously influential in constitutional theory.

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Dworkin argues that law consists not merely of enacted rules but of principles that explain and justify those rules, and that constitutional adjudication requires judges to identify and apply the principles that best make sense of the legal materials as an expression of a coherent moral vision.

Dworkin's concept of "constitutional integrity" holds that the constitution should be interpreted as a coherent whole, with each provision understood in light of the principles that explain the constitution's overall structure and purpose. Applied to the Bangladesh Constitution, this approach would require interpreting the equality provisions, the fundamental rights, the directive principles, and the structural provisions on separation of powers as components of a coherent constitutional vision of democratic governance under the rule of law, and would resist interpretations that treat any single provision in isolation from this larger context.

Dworkin's distinction between "concepts" and "conceptions" is particularly useful for constitutional interpretation in contested areas. The constitution may use concept-words like "equality," "freedom," and "democracy" without specifying their exact content, leaving it to successive generations of interpreters to develop conceptions of these concepts that are consistent with the underlying moral commitments. The job of the constitutional judge, on this view, is not to discover the framers' specific intentions but to develop the best conception of the constitutional concepts that is consistent with the constitutional text and the political morality of the community.

12.3 Critical Legal Studies and the Bangladesh Constitution

The critical legal studies movement, which emerged in American law schools in the 1970s, offers a more skeptical perspective on constitutional law that is useful for understanding the gap between constitutional promise and political reality in Bangladesh. Critical legal scholars argue that law, including constitutional law, is not a neutral application of general principles but a political practice that reflects and reproduces existing distributions of power and privilege. Constitutional guarantees of equality and rights are, on this view, compatible with systematic inequality and rights violations precisely because they operate within a legal framework that serves the interests of the powerful.

The critical perspective is illuminating when applied to the Bangladesh Constitution's formal guarantees and their actual effects. The formal equality guarantee of Article 27 coexists with systematic discrimination against women, religious minorities, and indigenous peoples. The formal guarantee of press freedom in Article 39 coexists with the systematic suppression of critical journalism. The formal protection of the right to fair trial in Article 35 coexists with widespread use of pre-trial detention, police brutality, and institutional bias in the administration of criminal justice. These gaps are not accidental: they reflect the political interests of the groups that control the state apparatus and that use constitutional forms to legitimize the exercise of power while preventing the substantive realization of the rights that the constitution nominally guarantees.

The critical perspective does not, however, lead to constitutional nihilism. The critical insight that constitutional law is political does not mean that constitutional rights are worthless or that constitutional reform is pointless. Rather, it suggests that constitutional reform must be

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understood as part of a broader political project of democratizing power and expanding meaningful participation in public life. Constitutional provisions, while they cannot by themselves change social realities, can provide frameworks for political mobilization and can be invoked by social movements to hold governments accountable for the gap between constitutional promise and political reality.

12.4 Feminist Constitutional Theory and Gender Justice

Feminist constitutional theory provides an essential analytical perspective that mainstream constitutional scholarship has often failed to integrate adequately. The feminist critique of constitutional law focuses on several dimensions: the formal gender-neutrality of most constitutional texts conceals structural biases that disadvantage women; the constitution's guarantee of equality has historically been interpreted in ways that reflect male-centered norms; the public-private distinction embedded in constitutional law has been used to insulate the domestic sphere from constitutional scrutiny, allowing the violation of women's rights in the family to be treated as outside the constitution's concern; and the formal participation of women in constitution-making processes has been insufficient to ensure that the resulting documents reflect women's interests and perspectives.

The Bangladesh Constitution's provisions on gender are formally progressive: Article 28 guarantees equality regardless of sex, and Article 28(2) provides that women shall have equal rights with men in all spheres of state and of public life. Article 19(3) directs the state to ensure equal opportunities for women. However, these formal commitments coexist with pervasive gender inequality in practice. Women remain significantly underrepresented in political life despite a quota system for reserved seats in Parliament. Violence against women, including domestic violence, rape, and acid attacks, remains endemic. Women face systematic discrimination in employment, property rights, and access to justice. The formal constitutional guarantees have not, by themselves, been sufficient to produce substantive gender equality.

The proposed constitutional reforms include some attention to gender justice, including proposals for enhanced representation of women in the proposed bicameral legislature and for expanded socio-economic rights that would benefit women disproportionately. But feminist constitutional scholars would argue that more fundamental structural changes are needed: changes that address not merely the formal representation of women in constitutional institutions but the deeper structural conditions that produce gender inequality, including patriarchal social norms, economic dependence, and the failure of the legal system to effectively protect women's rights.

CHAPTER THIRTEEN: THE PATH FORWARD -- THEORY, PRACTICE, AND THE CHALLENGES OF CONSTITUTIONAL REGENERATION

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13.1 The Conditions for Constitutional Success

Constitutional reform is not a technical exercise in institutional design. It is a political and moral project that requires not only good institutional blueprints but also the social, political, and cultural conditions that make those institutions effective. The history of constitutional reform in post-colonial democracies is littered with admirable constitutional texts that failed to deliver the governance they promised because the conditions necessary for their effective operation were absent.

What are the conditions for constitutional success? Constitutional scholars have identified several. The first is a minimum level of social trust: citizens must trust each other and their institutions enough to commit to constitutional rules even when those rules produce outcomes they do not prefer. Where social trust is very low, as in societies deeply divided by ethnicity, religion, or class, constitutional institutions tend to be unstable and are easily subverted by particularist loyalties.

The second condition is a culture of constitutionalism among political and legal elites: the understanding that the constitution is genuinely binding, that violations of constitutional norms are not merely legally problematic but morally shameful, and that long-term political success requires operating within the constitutional framework rather than subverting it. Building this culture is a long-term project that cannot be accomplished through institutional design alone but requires sustained commitment by political leaders, legal practitioners, and civil society.

The third condition is institutional capacity: the courts, electoral institutions, anti-corruption bodies, and other constitutional institutions must have the resources, expertise, and political independence to perform their functions effectively. Constitutional institutions that are chronically underfunded, staffed with patronage appointees, and subject to political interference cannot deliver on the promises of the constitutional text.

The fourth condition is a free and informed public sphere: citizens must have access to accurate information about the government's performance, must have the freedom to discuss and debate constitutional questions, and must have channels through which they can make their views known to those in power. A free press, an active civil society, and meaningful mechanisms for public participation in governance are all components of this requirement.

Bangladesh in 2025-2026 presents a mixed picture with respect to these conditions. The social trust between the country's major political forces is very low: the mutual hostility between the Awami League and the BNP, which has dominated Bangladeshi politics for three decades, makes genuine constitutional consensus extremely difficult to achieve. The culture of constitutionalism among political elites is weak: both major parties have historically treated the constitution as a tool to be manipulated in the service of partisan advantage rather than as a genuine framework of governmental authority. Institutional capacity is limited: the judiciary, the civil service, the police, and other governmental institutions remain significantly underfunded and subject to political influence. But the free and informed public sphere has shown remarkable resilience: the 2024 uprising demonstrated the capacity of Bangladeshi civil society, particularly

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its younger generation, to mobilize around constitutional principles and to hold power accountable in the most dramatic way possible.

13.2 The Referendum of February 2026 and Its Constitutional Significance

The constitutional referendum held on February 12, 2026, simultaneously with the general elections, represented a historic moment in Bangladesh's constitutional development. It was the first direct referendum on constitutional reform in the country's history, and it asked citizens to pass judgment on a package of constitutional changes that, if approved, would significantly alter the fundamental structure of Bangladesh's governmental system.

The decision to hold a referendum on constitutional reform reflects a constitutional philosophy that gives direct popular participation a special role in fundamental constitutional decisions. In countries that regularly use referendums for constitutional change, including Switzerland, Ireland, and Australia, the referendum mechanism is valued not merely for its procedural efficiency but for the democratic legitimacy it confers: a constitutional change endorsed by the direct vote of the people carries a stronger democratic mandate than a change enacted by Parliament alone, however large the parliamentary majority.

The Bangladesh referendum was, however, held in circumstances that raise questions about how genuinely free and informed it could be. The referendum was organized by an interim government that was itself not constitutionally grounded in the normal sense, in a political environment marked by the exclusion of a major political party (the Awami League) from the political process, and in a period of intense political excitement in which the pressure to vote "Yes" and endorse the reform agenda was substantial. Whether the referendum result, whatever it was, can be regarded as an authentic expression of the considered constitutional preferences of the Bangladeshi people is a question that constitutional scholars and political observers will continue to debate.

13.3 The Problem of Constitutional Sustainability

The most important challenge facing Bangladesh's constitutional reform process is not the design of good institutions but the creation of conditions under which those institutions can be sustained over time. A constitution adopted today must be capable of governing Bangladesh not just in the immediate post-reform period, when there is strong political will for change, but also in ten, twenty, or fifty years, when the political landscape may have shifted dramatically and when the pressures on constitutional institutions will be very different from those of 2025.

Constitutional sustainability requires several things. First, the constitution must be genuinely inclusive: major political forces must feel that the constitutional framework accommodates their interests and values adequately that they have an incentive to operate within it rather than against it. A constitution that excludes a significant political force from its framework of recognition is vulnerable to destabilization by that force.

Second, the constitution must be flexible enough to accommodate change without being so flexible that it provides no genuine constraints. The amendment procedures established by the

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proposed reforms, which would require a two-thirds majority in the lower house and a simple majority in the upper house, plus a national referendum for certain fundamental changes, represent a significant increase in the procedural barriers to amendment compared with the existing framework. Whether this increased rigidity is calibrated correctly is an important question: too rigid, and the constitution will become a straitjacket; too flexible, and it will be easily manipulated by whichever party controls the government.

Third, the constitution's institutions must be designed for effectiveness in Bangladesh's specific conditions rather than simply transplanted from other constitutional systems. The institutional designs that work in South Africa, Germany, or India work in those contexts partly because they are supported by the specific political cultures, institutional capacities, and social conditions of those countries. Institutional designs must be adapted to Bangladesh's own conditions, including its pattern of intense inter-party competition, its relatively limited institutional capacity, its young democratic culture, and its specific patterns of social division.

Fourth, constitutional reform must be accompanied by broader institutional and social reforms: reforms of the legal system, the civil service, the police, the education system, and civil society that create the conditions under which constitutional institutions can function effectively. Constitutional design is not sufficient by itself: the best-designed constitutional institutions will fail if they operate in an environment of systematic corruption, inadequate education, weak civil society, and unequal distribution of power and resources.

CONCLUDING REFLECTIONS TO PART ONE

The examination conducted in this first part of the textbook has covered an enormous amount of ground, from the ancient roots of constitutional philosophy to the most recent developments in Bangladesh's constitutional reform process. Several overarching themes have emerged from this examination that will provide the organizing framework for the analyses in the remaining eleven parts of this work.

The first theme is the persistent gap between constitutional text and constitutional reality in Bangladesh. The constitution has always promised more than it has delivered in terms of democratic governance, protection of fundamental rights, and equality before the law. This gap is not accidental: it reflects structural features of the political system, including the intense concentration of power in the executive, the weakness of accountability institutions, and the use of constitutional mechanisms for partisan advantage, that have prevented the realization of the constitution's democratic promise.

The second theme is the inadequacy of constitutional design alone as a remedy for political dysfunction. Bangladesh's constitutional history is littered with institutional reforms that were expected to solve fundamental political problems but that were subsequently subverted or bypassed by political actors with the incentive and the capacity to do so. The caretaker government system is the most dramatic example: a constitutional innovation that appeared to solve the problem of electoral integrity was abolished by the very party it had most constrained.

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The reform proposals currently under consideration must be evaluated not merely in terms of their institutional logic but in terms of their vulnerability to future subversion.

The third theme is the importance of constituent power and popular sovereignty as the ultimate sources of constitutional legitimacy. The 2024 uprising was a dramatic expression of the people's constituent power: a popular assertion of constitutional sovereignty that transcended the formal mechanisms of the constitutional order. This popular assertion of sovereignty provides the most compelling democratic legitimation for the reform process, but it also creates obligations: the reforms must genuinely reflect the aspirations that animated the uprising, not merely the preferences of the political and intellectual elites who have shaped the reform agenda.

The fourth theme is the global and comparative character of constitutional law. Bangladesh's constitutional challenges are not unique: similar struggles over executive dominance, electoral integrity, judicial independence, and rights protection are occurring in constitutional democracies around the world. The comparative literature on constitutional design offers valuable lessons, but it also cautions against the simple transplantation of institutional designs without adequate attention to the specific political, social, and cultural conditions of the adopting country.

The fifth theme is the philosophical depth required for serious constitutional analysis. Constitutional law is not merely a technical legal discipline but a branch of political philosophy, engaging fundamental questions about the nature of justice, the sources of political authority, the relationship between individual rights and collective interests, and the conditions under which constitutional democracy can flourish. A constitutional lawyer who lacks philosophical depth will be unable to adequately evaluate the options facing constitutional reformers or to make the most compelling arguments for constitutional principles in the face of political pressure.

The remaining eleven parts of this textbook will build on the foundations laid in this first part to examine, in detail, specific constitutional provisions and institutions, the jurisprudence of the Supreme Court of Bangladesh, the proposals for constitutional reform, and the broader context of comparative constitutional law and theory within which Bangladesh's constitutional development must be situated.

The story of the Bangladesh Constitution is not finished. It is, at the moment of this writing, at one of its most consequential turning points. The choices made in the coming months and years about the structure of the constitution, the design of its institutions, and the culture of constitutionalism that those institutions embody and promote will shape the lives of Bangladesh's more than 170 million citizens for decades to come. Understanding those choices, their foundations, their implications, and their alternatives is the task of this textbook. It is also, for those who care about Bangladesh's future as a democratic republic governed by law, a task of urgency and moral seriousness.

The constitutional soul of Bangladesh, expressed in the aspirations of the liberation war of 1971, battered and bruised by five decades of political turbulence, and renewed by the extraordinary popular uprising of 2024, is not dead. It is waiting, insistently and with great urgency, to be given constitutional form that can finally sustain it.

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FURTHER READING AND KEY SOURCES FOR PART ONE

The following works are essential reading for students who wish to deepen their understanding of the themes examined in this part. On the theoretical foundations of constitutionalism and constitutional theory, students should consult Rawls, John, A Theory of Justice (1971) and Political Liberalism (1993); Dworkin, Ronald, Law's Empire (1986) and Freedom's Law (1996); Habermas, Jurgen, Between Facts and Norms (1996); Ackerman, Bruce, We the People (two volumes, 1991 and 1998); and Elster, Jon, Ulysses and the Sirens (1979) and Ulysses Unbound (2000).

On comparative constitutional law and democratic transitions, students should consult Ginsburg, Tom, and Huq, Aziz, How Democracies Die (2018); Levitsky, Steven, and Ziblatt, Daniel, How Democracies Die (2018); Dixon, Rosalind, and Ginsburg, Tom (eds), Comparative Constitutional Law (2011); Albert, Richard, Constitutional Amendments: Making, Breaking, and Changing Constitutions (2019); and Teitel, Ruti, Transitional Justice (2000).

On the specific constitutional history and jurisprudence of Bangladesh, students should consult Islam, Mahmudul, Constitutional Law of Bangladesh (multiple editions); Hoque, Ridwanul, Judicial Activism in Bangladesh (2011); Ahmed, Kawser, The Desirability of Application of the Basic Structure Doctrine in Bangladesh (2024); and the multiple reports and analyses published by International IDEA's ConstitutionNet, particularly those from the constitutional reform process of 2024-2025.

On the post-colonial constitutional predicament, students should consult Hirschl, Ran, Towards Juristocracy (2004) and Comparative Matters (2014); Khaitan, Tarunabh, A Theory of Discrimination Law (2015); and Tushnet, Mark, and Khosla, Madhav (eds), Unstable Constitutionalism (2015).

End of Part One

PART TWO

FUNDAMENTAL RIGHTS, CONSTITUTIONAL FREEDOMS, AND THE ARCHITECTURE OF HUMAN DIGNITY: A JURISPRUDENTIAL EXAMINATION OF PART III OF THE CONSTITUTION OF BANGLADESH AND THE IMPERATIVE OF REFORM

PREFACE TO PART TWO

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If Part One of this textbook established the philosophical, historical, and structural foundations upon which the entire constitutional enterprise of Bangladesh rests, Part Two descends into the most intimate and morally urgent terrain of constitutional law: the fundamental rights of the individual human being against the state. This is the territory where constitutional theory becomes constitutional life. It is here, in the provisions of Part III of the Constitution of Bangladesh encompassing Articles 26 through 47A, that the abstract commitments of the Preamble and the general principles of the constitutional order are translated into justiciable legal entitlements that real people can invoke in real courts against the exercise of real state power.

The fundamental rights chapter of the Bangladesh Constitution represents, at one and the same time, the document's most admirable achievement and its most profound failure. As an achievement, it established at the moment of national independence a comprehensive catalogue of civil and political rights that reflected the most advanced constitutional thinking of its era, drawing on the jurisprudential experience of post-war constitutionalism, the Indian constitutional tradition, and the emerging body of international human rights law. As a failure, it has proven systematically incapable of delivering on its promises, bending under political pressure, yielding to executive manipulation, and producing, through the combined effect of legislative limitation and judicial deference, a body of constitutional rights law that has served the interests of the powerful more reliably than the interests of the vulnerable.

Part Two examines this complex legacy with the depth and critical rigor that it demands. It traces the philosophical foundations of fundamental rights theory through the major jurisprudential traditions that have shaped constitutional rights discourse globally, situates the specific provisions of Part III within that theoretical landscape, examines the history of rights adjudication in Bangladesh's Supreme Court with particular attention to both landmark progressive decisions and episodes of catastrophic judicial failure, investigates the role of emergency powers and special legislation in systematically hollowing out constitutional rights guarantees, and evaluates the reform proposals advanced by the Constitutional Reform Commission and the July Charter of 2025 against the demanding benchmark of a genuinely rights-protective constitutional order.

The analysis in this Part draws on recent theoretical developments in rights jurisprudence that have significantly advanced the field since the Bangladesh Constitution was drafted: proportionality analysis as developed by German, Israeli, and Canadian constitutional courts and now embraced across the comparative constitutional law world; the capabilities approach of Amartya Sen and Martha Nussbaum as an alternative framework for conceptualizing rights; the emerging jurisprudence of socio-economic rights as justiciable constitutional entitlements rather than merely aspirational policy goals; the theory of positive obligations as a complement to the classical negative rights framework; and the contemporary debates about digital rights, privacy, and the right to internet access that have been placed on the global constitutional agenda with particular urgency by the proliferation of authoritarian digital governance in the twenty-first century.

The urgency of this analysis is sharpened by the specific circumstances of Bangladesh in 2025 and 2026. The Constitutional Reform Commission has proposed a radical restructuring of the fundamental rights framework, including the unification of Part II directive principles and Part

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III fundamental rights into a single enforceable Bill of Rights, the addition of new rights including a right to internet access and a right to personal data protection, and the reconfiguration of the limitations framework to bring it into conformity with international standards of proportionality. The referendum of February 2026 approved a framework for these changes, and the newly elected parliament is now, at least in formal terms, tasked with implementing them within 180 days of the Constitution Reform Council's first session. Understanding what these changes mean, whether they go far enough, how they compare with international best practice, and what constitutional philosophy ought to guide their implementation requires precisely the kind of deep jurisprudential analysis that this Part undertakes.

CHAPTER ONE: THE PHILOSOPHY OF FUNDAMENTAL RIGHTS: WHY RIGHTS EXIST AND WHAT THEY DEMAND

1.1 The Concept of Rights in Moral and Political Philosophy

The concept of a fundamental right is not self-explanatory. It rests on a complex philosophical foundation that connects questions of moral theory, political legitimacy, and institutional design in ways that legal analysis alone cannot resolve. Before examining the specific provisions of Part III of the Bangladesh Constitution, it is therefore necessary to confront the foundational philosophical question: what is a fundamental right, and why should the state be bound to respect it?

The philosophical concept of rights has a long and complex history. In its modern form, it emerged primarily from the natural rights tradition of the seventeenth and eighteenth centuries, associated with thinkers including John Locke, Hugo Grotius, and Samuel von Pufendorf. For Locke, rights were God-given properties of individual human beings that existed prior to and independently of any political order. Life, liberty, and property were, on Locke's account, natural possessions of every person that no government could legitimately take away. The social contract by which individuals transferred from the state of nature into political society was precisely a mechanism for better protecting these pre-political rights, and any government that systematically violated them had forfeited its claim to obedience.

This natural rights tradition provided the philosophical vocabulary for the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen, both of which spoke of rights as self-evident, inalienable, and grounded in nature rather than in political convention. The tradition also provided the philosophical lineage for the fundamental rights chapters of post-war constitutions, including the Bangladesh Constitution of 1972, whose drafters drew on this tradition even as they worked within a legal framework that was more positivist than naturalist in its formal character.

However, the natural rights tradition has been subjected to powerful philosophical criticism. Jeremy Bentham famously dismissed natural rights as "nonsense upon stilts," arguing that talk of rights that exist prior to and independently of positive law is philosophically incoherent, because rights by their nature require a legal system to define, enforce, and adjudicate them. This

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utilitarian critique of natural rights does not lead to the conclusion that rights are unimportant, but it does reframe the question: instead of asking what rights people naturally possess, the utilitarian asks what rights a legal system should recognize in order to maximize aggregate welfare. The answer to that utilitarian question may produce a similar list of protected interests, but the philosophical grounding is fundamentally different and the implications for the scope and limits of rights may diverge significantly.

Immanuel Kant offered a third philosophical grounding for rights that has proven enormously influential in contemporary constitutional theory. For Kant, the foundation of rights is not nature or utility but the dignity of rational persons. Every human being, by virtue of possessing rational autonomy, the capacity to set ends for oneself and to govern oneself according to rational principles, is an end in themselves rather than merely a means to the ends of others. This categorical imperative generates a principle of equal respect that is the philosophical foundation of constitutional rights: the state must treat every person as an autonomous rational agent deserving of respect, and constitutional rights are the legal expression of this demand. The Kantian framework is reflected in the German Constitution's foundational guarantee of human dignity in Article 1(1) and has influenced the constitutional jurisprudence of many countries, including the emerging rights jurisprudence of the Bangladesh Supreme Court.

The most influential contemporary philosophical grounding of constitutional rights is probably Ronald Dworkin's rights-as-trumps theory. For Dworkin, rights are not simply one consideration to be balanced against others in a utilitarian calculus. They are, rather, constraints on what the government may do in pursuit of collective goals, even legitimate collective goals. A right, in Dworkin's terminology, "trumps" utility: the fact that violating an individual's right would maximize aggregate welfare does not justify the violation, because the right exists precisely to protect the individual against being sacrificed for the collective good. This anti-utilitarian character of rights is one of their most important features, and it is reflected in the constitutional requirement that rights limitations must be justified not merely by showing that they serve a collective purpose but by showing that they satisfy more demanding standards of necessity and proportionality.

John Rawls's theory of justice provides yet another philosophical grounding for fundamental rights that is particularly relevant to constitutional design. In Rawls's theory, the principles of justice that should govern the basic structure of society are those that rational individuals would choose from behind a veil of ignorance, without knowing what social position, natural talents, or conception of the good they would occupy in the resulting society. From this original position, Rawls argues, rational choosers would select two principles: first, a principle of equal basic liberties that protects a comprehensive list of fundamental rights; and second, a difference principle that permits inequalities only if they benefit the least advantaged members of society. The equal basic liberties principle takes priority over the difference principle, which means that no amount of economic benefit can justify the violation of fundamental rights. This lexical priority of basic liberties is a structural feature that Rawls argued was essential to any genuinely just constitutional order.

The capabilities approach, developed by Amartya Sen in his work on development as freedom and elaborated by Martha Nussbaum in her theory of the core human capabilities, offers a more

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substantive framework that has gained significant influence in recent rights theory. Rather than asking what rights people abstractly possess, the capabilities approach asks what real opportunities people have to live flourishing human lives. A person who nominally enjoys freedom of expression but lacks the literacy, the access to media, and the protection from retaliation necessary to exercise that freedom in practice does not truly possess the right. The capabilities approach thus shifts attention from formal rights to substantive empowerment, from the language of entitlement to the reality of what people are actually able to do and be.

This capabilities perspective has significant implications for constitutional design and for the evaluation of the Bangladesh Constitution's rights provisions. It suggests that a merely formal guarantee of rights, however comprehensive on paper, is insufficient if the social, economic, and institutional conditions necessary for the exercise of those rights are absent. It also suggests that the sharp distinction between civil and political rights on one hand and economic, social, and cultural rights on the other, which has structured much of constitutional rights law including in Bangladesh, may be philosophically untenable: if the right to free expression is empty without the substantive capacities necessary to exercise it, then rights of education, economic security, and healthcare are as fundamental to human freedom as the classical civil liberties.

1.2 The Generations of Rights and the Problem of the Bangladesh Constitution's Dual Structure

Constitutional rights scholarship has organized rights into three successive generations, a framework that, while contested, is useful for understanding the structural tension at the heart of the Bangladesh Constitution's rights regime.

First-generation rights are the classical civil and political rights of the liberal constitutional tradition: freedom of expression, assembly, association, and religion; the right to personal liberty; the right to equality before the law; the right to a fair trial; and the right to political participation. These rights are characteristically negative in the sense that they primarily require the state to refrain from certain kinds of interference with individual liberty. They are the rights that were placed in Part III of the Bangladesh Constitution as justiciable fundamental rights, enforceable by the courts against the state.

Second-generation rights are the economic, social, and cultural rights associated with the socialist and welfare state traditions: the right to work, to food, to health care, to education, to housing, and to social security. These rights are characteristically positive in the sense that they require the state to take affirmative action to provide goods and services, not merely to abstain from interference. In the Bangladesh Constitution, rights of this character were placed in Part II as Fundamental Principles of State Policy, described in Article 8(2) as "fundamental to the governance of Bangladesh" but explicitly declared to be non-justiciable, meaning that they cannot be enforced through court action.

Third-generation rights are the collective or solidarity rights that have emerged in more recent human rights discourse: the right to development, the right to a clean environment, the right to peace, and the rights of peoples to self-determination. These rights have gained recognition in international human rights documents but remain contested in constitutional law, both because of

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the philosophical difficulties of grounding collective rights in a framework that is primarily oriented toward individual entitlements and because of the institutional challenges of making collective rights judicially enforceable.

The dual structure of the Bangladesh Constitution, with justiciable civil and political rights in Part III and non-justiciable directive principles in Part II, reflects the constitutional settlement that was reached in many post-colonial constitutions, particularly under the influence of the Indian Constitution which established the same framework. The architects of this structure argued that while civil and political rights could be made immediately justiciable without undue fiscal burden, economic and social rights required large-scale public expenditure that could not be immediately mandated by courts without creating unsustainable fiscal demands on a newly independent and economically fragile state.

This dual structure has been the subject of sustained jurisprudential criticism from multiple perspectives. From the left, it has been argued that by making only civil and political rights justiciable while relegating economic and social rights to the status of non-enforceable aspirations, the constitution embedded a liberal rather than a social democratic conception of rights that systematically disadvantages the poor and marginalized. The right to freedom of expression is worth far more to a literate, educated, economically secure person than to a person who is illiterate, impoverished, and vulnerable to retaliation. By making expression rights justiciable but education rights non-justiciable, the constitution protected the interests of the privileged more effectively than those of the disadvantaged.

From a capabilities perspective, the criticism takes a similar direction: if the right to education, nutrition, and health care are prerequisites for the meaningful exercise of civil and political rights, then excluding them from justiciable constitutional protection is not merely a limitation of social rights but a hollowing out of civil and political rights as well. A constitutional right to free expression that does not come with a corresponding obligation to ensure that citizens have the education and information access necessary to exercise that right is less than half a right.

The Constitutional Reform Commission's proposal to unify Part II and Part III into a single enforceable Bill of Rights represents a significant philosophical shift in this direction. It reflects the growing international recognition that the artificial dichotomy between civil and political rights and economic, social, and cultural rights is philosophically untenable and institutionally counterproductive. The South African Constitution of 1996, which made socio-economic rights including rights to housing, health care, food, water, and social security directly justiciable, has demonstrated that courts can enforce economic and social rights in meaningful ways without overwhelming the judicial system or creating unsustainable fiscal demands on the government. The question now facing Bangladesh's constitutional reformers is not whether to make economic and social rights justiciable, but how to design the enforcement mechanisms in ways that are effective without being judicially overreaching.

1.3 The Limitations Framework: Proportionality, Balancing, and the Margin of Appreciation

Every modern constitution recognizes that fundamental rights are not absolute. Even the most fundamental freedoms may be limited by the state in pursuit of legitimate public purposes. The

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critical question is not whether rights may be limited but under what conditions, subject to what justification, and pursuant to what legal standard.

The Bangladesh Constitution's approach to rights limitations is established primarily in Articles 26 and 36-47, which contain both the general savings clause in Article 26 and the specific limitations clauses attached to particular rights. The general structure of Article 26 saves existing laws inconsistent with Part III from immediate invalidity and allows Parliament to enact laws inconsistent with Part III if they come within the protected categories. This general savings structure has been one of the most significant sources of constitutional rights erosion, as it allows Parliament to override fundamental rights simply by framing legislation within one of the recognized exception categories.

The dominant global standard for evaluating rights limitations has developed over the past three decades through the jurisprudence of the European Court of Human Rights, the Supreme Court of Canada, the Constitutional Court of Germany, the Constitutional Court of South Africa, and the Supreme Court of Israel into what is now commonly called proportionality analysis. Proportionality has become, as constitutional scholar Alec Stone Sweet has observed, the near-universal standard of constitutional rights adjudication across the world's major constitutional systems.

Proportionality analysis in its most developed form, as articulated particularly in the German Constitutional Court's jurisprudence and elaborated by scholars including Robert Alexy, involves four stages. The first stage asks whether the law pursues a legitimate aim: is the purpose served by the rights limitation one that can justify the limitation in a democratic constitutional state? The second stage asks whether the measure is suitable for achieving that legitimate aim: is there a rational connection between the limitation and the purpose it is said to serve? The third stage asks whether the measure is necessary: of all the measures that could serve the legitimate aim, is this the one that limits the right to the least possible extent? This necessity requirement is frequently the most demanding and practically significant stage of proportionality analysis. The fourth stage, sometimes called proportionality in the strict sense or balancing, asks whether the benefits achieved by the limitation outweigh the costs imposed on the right-holder: even if the limitation is suitable and necessary, it must not impose an excessive burden on the fundamental right in relation to the benefit achieved.

The proportionality framework represents a significant advance over the more deferential standards of judicial review that have historically characterized the Bangladesh Supreme Court's fundamental rights jurisprudence. Under a pure reasonableness standard, courts uphold a rights-limiting law so long as a reasonable person could regard it as justified, which in practice often means deferring to the government's assessment of necessity and proportionality. Under a proportionality standard, courts subject the government's justification to more rigorous scrutiny, asking not merely whether the limitation is reasonable but whether it is strictly necessary and whether it imposes a burden on the right that is proportionate to the benefit achieved.

The adoption of proportionality analysis by the Bangladesh Supreme Court has been gradual and uneven. In some decisions, particularly in the area of freedom of expression, the court has invoked proportionality-style reasoning without explicitly labeling it as such. In others, the court

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has retreated to a more deferential stance that is difficult to distinguish from simple rationality review. The Constitutional Reform Commission's proposals do not explicitly mandate proportionality analysis as the standard for reviewing rights limitations, but the proposal to unify the rights chapter and expand the range of justiciable rights would implicitly require the development of more sophisticated judicial review standards, which proportionality analysis provides.

The concept of the margin of appreciation, developed primarily by the European Court of Human Rights but now influential more broadly, provides a counterpoint to proportionality that is worth examining in the Bangladesh context. The margin of appreciation doctrine recognizes that different societies may legitimately make different judgments about the appropriate balance between individual rights and collective interests, and that international human rights courts should defer to these national judgments within limits. The underlying insight, that there is no single correct answer to many of the most difficult rights questions and that national constitutional communities have legitimate authority to develop their own balancing frameworks, is important for avoiding constitutional imperialism. At the same time, the margin of appreciation doctrine can be abused to justify departures from human rights standards that are not genuinely the product of legitimate democratic deliberation but rather of the interests of those in power.

CHAPTER TWO: PART III OF THE CONSTITUTION: A COMPREHENSIVE ARTICLE-BY-ARTICLE COMMENTARY

2.1 Article 26: The Savings Clause and the Paradox of Foundational Limitation

Article 26 of the Bangladesh Constitution performs a paradoxical function: it purports to establish the supremacy of fundamental rights over inconsistent legislation while simultaneously creating a mechanism through which that supremacy can be and has been systematically undermined. The article provides that all existing law inconsistent with the fundamental rights chapter shall be void to the extent of the inconsistency, and that no law inconsistent with the fundamental rights chapter shall be made. On its face, this is a strong constitutional supremacy clause.

However, Article 26(2) creates an important qualification: it saves laws enacted under Article 26(1) that come within the permitted exceptions. The interaction between the general supremacy clause and the specific limitations attached to individual rights in Articles 36-47 creates a complex web of permissions and prohibitions that has proven significantly easier to navigate toward rights restriction than toward rights protection.

The jurisprudential significance of Article 26 extends to its relationship with the basic structure doctrine. As examined in Part One, the Supreme Court has held that the basic structure of the constitution cannot be altered by amendment, and that fundamental rights form part of that basic structure. Article 26's savings clause would, on this analysis, not authorize legislation that violates the basic structure even if it comes within a recognized exception category. This is an

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important constitutional check, but its effectiveness depends entirely on the court's willingness to enforce the basic structure doctrine against legislative encroachment, which has historically been inconsistent.

The Comparative context is instructive. The Indian Constitution, from which the Bangladesh Article 26 was substantially adapted, contains in its Article 13 a similar provision. The Indian Supreme Court's interpretation of this provision, particularly in the context of the ongoing controversy about whether constitutional amendments that violate fundamental rights can be saved by the Article 13 savings clause, has produced a rich body of jurisprudence that is directly relevant to the Bangladesh context. The landmark Kesavananda Bharati case of 1973 established that even constitutional amendments cannot destroy the basic structure of the constitution, which includes the fundamental rights, a position that has significant implications for the Bangladesh context given the repeated use of constitutional amendments to curtail fundamental rights.

The proposed reform to abolish Articles 7(A) and 7(B), which were added by the fifteenth amendment and which imposed restrictions on constitutional amendments, raises important questions about the relationship between Article 26 and the protection of fundamental rights against constitutional amendment. The abolition of these articles removes what purported to be an additional layer of constitutional protection but which in practice functioned more as a mechanism for entrenching a particular government's constitutional preferences than as a genuine protection for fundamental rights. The question of what replaces these provisions as a safeguard against rights-destroying constitutional amendments is one of the most important unresolved questions in the current reform process.

2.2 Article 27: Equality Before the Law and the Geometry of Constitutional Justice

Article 27 of the Bangladesh Constitution declares that all citizens are equal before the law and are entitled to equal protection of the law. This deceptively simple provision is in fact the gateway to one of the most complex and contested areas of constitutional jurisprudence in any legal system: the meaning of equality, the relationship between formal and substantive equality, the scope of permissible differentiation and affirmative action, and the standards by which courts should evaluate whether legislative classifications are constitutionally acceptable.

The philosophical foundations of equality as a constitutional value are contested along several dimensions. The classical liberal understanding of equality, associated with the formal equality tradition, holds that equality requires that like cases be treated alike and unlike cases be treated differently in proportion to their relevant differences. On this view, the equality guarantee prohibits arbitrary or irrational discrimination but permits distinctions that are rationally related to legitimate public purposes. This formal equality framework is represented in the Supreme Court of Bangladesh's traditional interpretation of Article 27.

The substantive equality tradition, by contrast, holds that formal equal treatment of people in unequal positions can perpetuate rather than remedy inequality. If the law treats a wealthy person and an impoverished person identically, in a context where their unequal starting positions mean that identical treatment produces very different outcomes, formal equality is consistent with substantive inequality. The substantive equality tradition, associated philosophically with

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thinkers including John Rawls and Amartya Sen and institutionally with constitutional developments in South Africa, Canada, and increasingly in India, requires not merely that the law refrain from discriminating arbitrarily but that it take affirmative measures to address systematic disadvantages and work toward equality of outcome as well as equality of treatment.

The relationship between Article 27's general equality guarantee and Article 28's specific prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth creates an important structural question in the Bangladesh constitutional framework. Article 28 can be read as specifying particular grounds on which discrimination is specially prohibited, with Article 27 operating as a more general anti-discrimination norm that applies beyond these enumerated grounds. The question of whether Article 28 grounds should receive heightened scrutiny, as suspect classifications do in the American constitutional tradition or as listed grounds do in the South African Constitution, is one that the Bangladesh Supreme Court has not definitively resolved.

The landmark case of Bangladesh v. Shamsul Huda (WRIT Petition 3096 of 1991) represented an important early attempt by the High Court Division to develop a substantive equality jurisprudence, holding that the equality guarantee prohibits not merely formal discrimination but also legislative classifications that are arbitrary in the sense of having no rational basis. The court's reasoning in this and subsequent cases drew on both the Indian constitutional tradition and the emerging international equality jurisprudence to develop a standard that, while not fully embracing the substantive equality model, moved beyond purely formal equality analysis.

The most significant and contested application of equality principles in the Bangladesh constitutional context is the question of affirmative action and quotas. Article 28(4) provides that nothing in Article 28 shall prevent the state from making special provision in favor of women or children, and Article 29(3) makes a similar exception for women and backward sections of citizens. These provisions authorize affirmative action but do not mandate it, creating a constitutional space for positive differentiation that the courts have generally interpreted permissively.

The student protests that triggered the July-August 2024 uprising were directly concerned with the quota system for government employment, specifically the reservation of government jobs for descendants of freedom fighters, which had been maintained and expanded under the Awami League governments. The protesters argued that this quota system was arbitrary, perpetuated elite privilege under a historical guise, and violated the equality guarantee of Article 27. The government responded that the quota system was a legitimate exercise of affirmative action under Article 29(3). This controversy illustrates how equality rights can be deployed on both sides of a constitutional argument, and how the resolution of constitutional rights claims is ultimately a political as well as a legal question.

From a comparative perspective, the jurisprudence on affirmative action and quotas is highly variable across constitutional systems. The United States Supreme Court, in a line of decisions from Bakke through to Students for Fair Admissions v. Harvard in 2023, has progressively restricted the scope of permissible affirmative action in university admissions, applying strict scrutiny to racial classifications even those designed to promote diversity. The Indian Supreme

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Court, by contrast, has given a wide latitude to reservation policies for scheduled castes, scheduled tribes, and other backward classes, treating them as a constitutionally mandated component of substantive equality rather than a permitted exception to formal equality. The German Constitutional Court has adopted an intermediate approach, permitting positive discrimination measures in contexts where they are necessary to achieve substantive equality while subjecting them to proportionality review.

The Bangladesh Supreme Court's jurisprudence on affirmative action has been less developed than in these comparative jurisdictions, partly because the issue was politically sensitive during periods of Awami League dominance when the freedom fighter quota system was untouchable as a matter of political orthodoxy. The 2024 crisis has forced a constitutional reckoning with this issue that is long overdue, and the eventual constitutional and legislative resolution will be a significant test of the court's capacity to develop a principled equality jurisprudence that can navigate the genuine tensions between formal and substantive equality.

2.3 Article 28: Non-Discrimination and the Enumerated Grounds

Article 28 of the Bangladesh Constitution prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth in any aspect of state action including access to public places, public institutions, and public services. It is one of the constitution's most important equality provisions and one that has generated a substantial body of litigation and jurisprudential development.

The enumerated grounds of Article 28 reflect the categories of discrimination that were most salient to the constitution's drafters in 1972: religious discrimination (reflecting the experience of discrimination against Bengali Muslims in Pakistan), racial discrimination (reflecting international norms), caste discrimination (reflecting the Hindu caste system's continuing relevance for a significant minority), sex discrimination, and discrimination based on place of birth, which was included to prevent discrimination against Bangladeshis based on their being from certain regions or districts.

Notably absent from the enumerated grounds are several categories of discrimination that have received constitutional recognition in other modern constitutional systems and that are significant in the Bangladesh context. Disability is not an enumerated ground, despite the fact that persons with disabilities face systematic discrimination in employment, education, and access to public life. Sexual orientation and gender identity are not enumerated grounds, and the state of LGBTQ+ rights in Bangladesh remains severely constrained by Section 377 of the Penal Code, which criminalizes consensual same-sex conduct and which has not been challenged in the courts as successfully as the equivalent provision was challenged in India. Ethnicity, as distinct from race, is not clearly covered, which creates ambiguity about the constitutional protection available to indigenous peoples who face discrimination based on their specific ethnic identities.

The relationship between Article 28's non-discrimination guarantee and the constitutional position of indigenous peoples is one of the most sensitive and inadequately developed areas of Bangladesh constitutional jurisprudence. The Chittagong Hill Tracts, home to eleven indigenous peoples including the Chakma, Marma, and Tripura communities, has been the site of decades of

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conflict, displacement, and human rights violations. The 1997 Chittagong Hill Tracts Peace Accord promised autonomy and constitutional recognition for indigenous peoples, but implementation has been chronically incomplete. The constitution contains no specific recognition of indigenous peoples, and the term "tribal" used in some official documents is rejected by indigenous rights advocates as inadequate and demeaning.

The Constitutional Reform Commission's report recommended the recognition of all mother languages spoken in Bangladesh as state languages alongside Bengali, a provision that was included in the referendum question and approved by voters on February 12, 2026. This is a significant step toward linguistic recognition of Bangladesh's ethnic diversity, but it falls short of the comprehensive indigenous rights framework that advocates have been demanding for decades. International standards for indigenous rights, including the United Nations Declaration on the Rights of Indigenous Peoples of 2007, which Bangladesh has endorsed, require recognition of indigenous peoples' rights to their lands, territories, and resources, rights to self-determination and autonomous governance, and rights to maintain and develop their distinct cultural identities, all of which remain inadequately protected under the current and proposed constitutional framework.

The prohibition of sex discrimination in Article 28 has been the basis for significant constitutional litigation, including challenges to discriminatory provisions of family law, employment law, and criminal law. The Supreme Court has in several decisions struck down provisions that treat women less favorably than men without adequate justification. However, personal law governing marriage, divorce, inheritance, and custody remains governed by religious law for all communities, and the systematic inequality built into these religious law systems remains largely insulated from constitutional equality scrutiny by the argument that personal law is beyond the scope of the non-discrimination guarantee or that Article 2A, which declares Islam as the state religion, overrides the non-discrimination guarantee in the context of Islamic personal law.

This insulation of religious personal law from constitutional equality scrutiny represents one of the most significant failures of Bangladesh's fundamental rights framework from a feminist constitutional perspective. The Uniform Civil Code debate, which has been live in India for decades, has not received comparable attention in Bangladesh's constitutional discourse, partly because of the political sensitivity of proposing changes to Islamic personal law in a society where religious conservatism is a powerful political force. The Constitutional Reform Commission's report, while proposing extensive constitutional reforms, did not directly address the inequality built into religious personal law, leaving this as one of the most significant gaps in the reform agenda.

2.4 Article 29: Equality of Opportunity in Public Employment

Article 29 provides for equality of opportunity for all citizens in respect of appointment to or employment in the service of the Republic, and prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 29(3) creates exceptions permitting reservations for women, citizens of any backward section of citizens, or members of any particular community who are not adequately represented in the service of the Republic.

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The constitutional provision on public employment has been at the center of one of Bangladesh's most significant constitutional controversies: the quota system for government employment, which reserved positions for descendants of freedom fighters from the 1971 Liberation War, for women, for members of ethnic minorities, and for persons with disabilities. The freedom fighter descendant quota, which had been suspended by the Supreme Court in 2018 but was subsequently restored by the Appellate Division, was the immediate trigger for the student protests of July 2024.

The constitutional challenge to the freedom fighter quota raised several distinct legal arguments. The first was that the quota was not authorized by Article 29(3), which permits reservations for "backward sections of citizens" but does not specifically authorize reservations for descendants of freedom fighters as such. The petitioners argued that descendants of freedom fighters do not constitute a "backward section" in the constitutional sense and that the quota therefore lacks constitutional authorization. The government argued that the quota was a legitimate form of recognition for the families of those who sacrificed for the nation's liberation and fell within the spirit of Article 29(3)'s permission for affirmative action.

The second argument was that the quota, even if constitutionally authorized in principle, had been maintained at levels that rendered it disproportionate and therefore unconstitutional. With up to 30 percent of government positions reserved for freedom fighter descendants and additional reservations for women, minorities, and persons with disabilities, the total reservation in some categories exceeded 56 percent, leaving less than 44 percent of positions open to general competition. The petitioners argued that this level of reservation effectively converted the equality guarantee of Article 29(1) from a meaningful right into a nominal one for the majority of citizens.

The third argument drew on the principle, well established in Indian constitutional jurisprudence, that reservations should not be applied in a manner that perpetuates an entrenched reservation class indefinitely. The freedom fighter quota had been maintained for decades after the liberation war, and critics argued that the compelling justification that might have existed in the years immediately following 1971 had diminished to the point of non-existence by 2024, when the immediate descendants of freedom fighters were themselves middle-aged members of the educated class rather than disadvantaged citizens requiring special support.

The Supreme Court's handling of the freedom fighter quota controversy illustrated both the strengths and the weaknesses of Bangladesh's constitutional rights jurisprudence. The High Court Division's 2024 decision striking down the quota as unconstitutional was a significant act of judicial courage, but it was immediately politicized by the government's appeal and by the street violence that accompanied both the protests and the government's response. The ultimate resolution, which involved the government conceding a reduction in quotas through executive order rather than submitting to a definitive constitutional judgment, illustrated how political pressure can substitute for constitutional adjudication in a system where judicial independence is compromised.

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2.5 Articles 31-35: Liberty, Due Process, and the Rights of the Accused

Articles 31 through 35 of the Bangladesh Constitution establish a framework of due process rights that is central to the rule of law and to the protection of individuals against the arbitrary exercise of state power. These provisions include the right to protection of law in Article 31, the prohibition on deprivation of life or personal liberty except in accordance with law in Article 32, the safeguards against arrest and detention in Article 33, the prohibition on forced labor in Article 34, and the protection against double jeopardy, self-incrimination, and retroactive legislation in Article 35.

Article 32's guarantee that no person shall be deprived of life or personal liberty save in accordance with law is the foundational due process provision. The question of what "in accordance with law" requires has been the subject of extensive constitutional interpretation. The minimalist reading holds that any legally enacted and procedurally regular process satisfies this requirement, even if the substantive content of the law is arbitrary or unjust. The more demanding reading holds that "in accordance with law" requires not merely procedural regularity but substantive justice, importing a requirement of reasonableness or proportionality into the guarantee.

The Bangladesh Supreme Court has generally adopted an intermediate position, requiring that laws limiting personal liberty must be reasonable and not arbitrary, but applying this requirement with considerable deference to the legislature. The court has drawn on the Indian Supreme Court's development of substantive due process, particularly the landmark Maneka Gandhi case of 1978, in which the Indian court held that "procedure established by law" under Article 21 of the Indian Constitution requires a procedure that is fair, just, and reasonable, importing substantive content into what had previously been understood as a purely procedural guarantee.

The habeas corpus jurisdiction of the Supreme Court under Article 102, which authorizes the court to issue directions, orders, or writs including the writ of habeas corpus for the enforcement of fundamental rights, has been the primary vehicle for the judicial protection of personal liberty in Bangladesh. The court's record in habeas corpus cases during periods of authoritarian governance has been mixed, with periods of active judicial protection of liberty alternating with periods of near-complete deference to executive claims of necessity.

During the 2009-2024 period of Awami League governance, the habeas corpus jurisdiction was regularly deployed against political opponents and critics detained under the Digital Security Act and its predecessor legislation. The court's record in these cases reveals a troubling pattern: while the court occasionally struck down specific detentions as procedurally deficient, it rarely confronted the systemic problem of political detention or the constitutional validity of the legislation that provided the legal cover for such detention. This failure of the court to exercise its habeas corpus jurisdiction with the robustness that constitutional protection of liberty demands is one of the most significant indictments of Bangladesh's judicial performance in the rights domain.

Article 33's specific safeguards against arbitrary arrest and detention include the right to be informed of the grounds of arrest, the right to be produced before a magistrate within twenty-four

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hours, and the right to legal consultation. These provisions mirror the procedural safeguards found in most democratic constitutional systems and represent a minimum standard of protection against arbitrary detention. The systematic violation of these safeguards in practice, through prolonged detention under special laws, the use of remand provisions to extend custody without judicial scrutiny, and the failure of the courts to consistently enforce the twenty-four hour rule, represents a profound gap between constitutional text and constitutional reality.

The prohibition on torture, which is implicit in Article 35(5)'s guarantee against cruel and degrading treatment, has been one of the most flagrantly violated constitutional provisions in Bangladesh's history. Reports by Amnesty International, Human Rights Watch, and the UN Committee against Torture have consistently documented the widespread use of torture in police custody, particularly in the context of counterterrorism investigations and political cases. The constitutional guarantee has provided no effective protection against this practice, partly because of the difficulty of producing evidence of torture when victims are in custody, partly because of the courts' deference to police claims about interrogation methods, and partly because of the culture of impunity that has historically protected law enforcement personnel from accountability for the abuse of detainees.

The proposed constitutional reforms include provisions for enhanced protection of personal liberty, including the right against torture as an explicit fundamental right rather than merely an implicit guarantee, and the establishment of an independent oversight mechanism for places of detention. These provisions, if enacted and enforced, would represent a significant improvement in the constitutional protection of liberty. However, their effectiveness will depend not merely on their constitutional enshrinement but on the development of institutional mechanisms for enforcement, including independent monitoring of detention facilities, meaningful remedies for victims of torture, and criminal accountability for perpetrators.

2.6 Article 36: Freedom of Movement and the Politics of Mobility

Article 36 of the Bangladesh Constitution guarantees to every citizen the right to move freely throughout Bangladesh, to reside and settle in any place therein, and to leave and enter Bangladesh. This freedom of movement, which is a precondition for the exercise of many other civil and political rights, has been the subject of restriction through a variety of mechanisms that have not always received adequate judicial scrutiny.

The most significant restrictions on freedom of movement have occurred in the context of targeted orders against political opponents, including travel bans imposed on former government officials, opposition politicians, and civil society activists. Travel bans have been issued by courts as conditions of bail, by executive agencies as administrative measures, and by immigration authorities as exercises of discretionary power, often without clear legal authority and with inadequate procedural safeguards for the person affected. The constitutional guarantee of Article 36 should, in principle, require that any restriction on the right to leave Bangladesh be imposed through a legally authorized procedure with adequate opportunities for the affected person to challenge the restriction, but this standard has not been consistently applied.

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The restriction of movement in the Chittagong Hill Tracts through military operations and permit systems has been one of the most persistent and constitutionally problematic forms of movement restriction in Bangladesh's history. The requirement that non-tribal persons obtain permits to enter certain areas of the Chittagong Hill Tracts, while justified by the government as a security measure necessary in the context of ongoing tensions in the region, raises constitutional questions about both freedom of movement and equality before the law.

2.7 Articles 37-38: Freedom of Assembly and Association

Articles 37 and 38 guarantee respectively the right of peaceful assembly and the right to form associations and unions. These freedoms are essential to democratic political life: the ability to organize collectively, to assemble for political purposes, and to form associations that can represent collective interests in the political process is fundamental to any genuine democracy.

The history of these rights in Bangladesh reflects the broader pattern of rights restriction that has characterized the country's constitutional experience: formal guarantees coexisting with systematic practical restrictions, with the degree of restriction varying inversely with the political threat posed by the exercise of the right. During periods of opposition strength, the right to assembly has been restricted through bans on public demonstrations, excessive use of force against protesters, and the arrest of organizers. During periods when political mobilization threatened the ruling party's hold on power, these restrictions intensified dramatically.

The events of July-August 2024, which began as student protests against the quota system and evolved into a mass uprising that brought down the Awami League government, illustrated both the constitutional importance of the right to assembly and the willingness of authoritarian governments to suppress it through lethal force. The government's use of live ammunition against protesters, which resulted in hundreds of deaths and thousands of injuries, represented the most catastrophic violation of the right to peaceful assembly in Bangladesh's constitutional history. The subsequent accountability process, including the establishment of a commission to investigate the deaths and the eventual prosecution of senior officials for their role in ordering the violence, has been a test of the constitutional order's capacity to hold power accountable for rights violations.

The right to form associations and unions under Article 38 has been particularly significant for labor rights, as the ability of workers to form trade unions is the primary mechanism through which they can collectively bargain for better wages and working conditions. Bangladesh's garment industry, which employs millions of workers and is the primary engine of the country's export economy, has been a recurring site of controversy about union rights: while the legal framework for trade union registration exists, the practical obstacles to unionization have been substantial, including the use of anti-union discrimination by employers, the inadequate enforcement of labor laws by government inspectors, and occasional violence against union organizers.

The relationship between Article 38's freedom of association and the state's power to ban political organizations raises important constitutional questions that have been brought into sharp focus by the Awami League's effective exclusion from the political process in the post-uprising

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period. The Anti-Terrorism Act 2009, which was invoked to restrict the Awami League's activities in 2025, is a deeply problematic constitutional tool: the designation of a major political party as a terrorist organization on the basis of its alleged responsibility for atrocities committed by the state apparatus it controlled raises serious questions about political freedoms, the rule of law, and the appropriate boundaries of counterterrorism legislation in a democratic constitutional system.

2.8 Article 39: Freedom of Thought, Conscience, and Expression

Article 39 of the Bangladesh Constitution is among its most important provisions and the one whose systematic violation during the 2009-2024 period represents perhaps the most comprehensive failure of Bangladesh's fundamental rights framework. It guarantees freedom of thought and conscience, freedom of speech and expression, and freedom of the press, subject to reasonable restrictions imposed by law in the interests of the security or sovereignty of Bangladesh, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to any offense.

The philosophical foundations of freedom of expression are among the most extensively developed in constitutional theory, drawing on arguments from multiple traditions. The first and most traditional argument for freedom of expression is the argument from truth, associated with John Stuart Mill and his work On Liberty: in a free marketplace of ideas, truth will prevail over falsehood in the long run because human beings are collectively capable of distinguishing between them when they are able to reason freely. Suppressing speech on the grounds that it is false or dangerous is therefore not only an affront to individual autonomy but also counterproductive from the perspective of the collective pursuit of truth.

The second argument is the argument from democracy: freedom of expression is a precondition for democratic self-governance, because citizens cannot make informed decisions about public affairs if they are prevented from accessing information, forming and expressing opinions, and challenging the positions of those in power. On this account, freedom of expression is especially important in the domain of political speech, which receives the strongest constitutional protection in most democratic systems precisely because its suppression is most directly damaging to democratic governance.

The third argument is the argument from autonomy: freedom of expression is constitutive of individual autonomy, the capacity to form one's own views, to communicate them to others, and to participate as an equal in the public discourse of one's society. Suppressing expression is therefore an attack on the individual's identity and dignity as a rational agent, not merely an interference with a useful social practice.

These arguments from truth, democracy, and autonomy all point toward a strong constitutional protection for freedom of expression, but they also suggest different boundaries. The marketplace of ideas argument suggests that false speech should be tolerated because the remedy for bad speech is more speech, not censorship. The democratic argument suggests that political speech deserves especially strong protection but may not extend with the same force to commercial speech or speech in private contexts. The autonomy argument suggests that creative

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expression deserves constitutional protection even when it serves no immediately identifiable public function, because the capacity to create and to communicate is itself an expression of human dignity.

The Digital Security Act of 2018 and its successor, the Cyber Security Act of 2023, represent the most systematic contemporary assault on Article 39's guarantee of freedom of expression in Bangladesh's constitutional history. These legislative instruments, examined in detail in the following section, criminalized vast swathes of online speech, created vaguely defined offenses that could be applied to critical journalism, satire, and political commentary, and imposed criminal penalties that served as powerful disincentives to the exercise of constitutionally protected expression. Their use against hundreds of journalists, bloggers, activists, and critics represented a comprehensive program of speech suppression that was entirely incompatible with Article 39's guarantee.

The constitutional challenge to these legislative instruments presented the Supreme Court with an opportunity to develop a robust doctrine of freedom of expression that could provide meaningful protection against future legislated suppression. The court's failure to seize this opportunity, by consistently upholding the challenged provisions or declining to hear the challenges on procedural grounds, is one of the most significant failures of Bangladesh's constitutional adjudication. A court willing to apply proportionality analysis to the challenged provisions would have found them constitutionally indefensible: the vagueness of the offense definitions failed the requirement of legal certainty; the criminalization of expression without proof of actual harm failed the necessity test; and the chilling effect on journalism and public discourse was grossly disproportionate to any legitimate governmental interest served.

CHAPTER THREE: THE DIGITAL SECURITY ACT, THE CYBER SECURITY ACT, AND THE CRIMINALIZATION OF SPEECH: A CONSTITUTIONAL AUTOPSY

3.1 From the Information and Communication Technology Act to the Digital Security Act: A Legislative History of Repression

The legal architecture of digital speech repression in Bangladesh was constructed progressively over more than a decade, beginning with Section 57 of the Information and Communication Technology (ICT) Act 2006, proceeding through the Digital Security Act 2018, and continuing with the Cyber Security Act 2023. Each successive iteration of these legislative instruments refined and expanded the tools available to the government for suppressing critical speech while maintaining the formal structure of a legal authorization that could be characterized as a reasonable restriction under Article 39.

Section 57 of the ICT Act was the original instrument of digital speech suppression. It criminalized the publication of material that was "indecent or obscene," or that caused or was likely to cause "deterioration in law and order," or that "prejudiced the image of the state or a person," or that "hurts religious beliefs or sentiments." The breadth and vagueness of these offense definitions was breathtaking from a constitutional perspective. Almost any critical

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commentary about government policy could be characterized as "prejudicing the image of the state." Almost any satirical comment about a public figure could be characterized as "prejudicing the image of a person." These provisions gave the government essentially unlimited power to criminalize speech it found inconvenient, dressed in the formal legitimacy of legislative authorization.

The Digital Security Act of 2018 replaced and expanded Section 57's provisions, creating a comprehensive statutory framework for the suppression of online speech. The Act's most constitutionally problematic provisions included Section 25, which criminalized sending offensive, false, or threatening information through digital means; Section 28, which criminalized publicizing information that could "deteriorate law and order" or "tarnish the image of the state"; Section 29, which criminalized defamation through digital media; Section 31, which criminalized actions likely to create "hostility, hatred or adversity among different classes or communities"; and Section 32, which criminalized collecting, obtaining, or transferring "secret information" through electronic means, a provision that was used against journalists investigating corruption and human rights violations.

The Act's procedural provisions were equally problematic from a constitutional perspective. The police were granted powers of warrantless arrest and search in connection with DSA offenses, effectively removing judicial oversight from the initial stages of enforcement. The offense definitions were such that the same conduct could potentially attract charges under multiple provisions, creating risks of multiple prosecutions and disproportionate cumulative penalties. The bail provisions were structured in ways that kept defendants in pre-trial detention for extended periods, serving as punishment in itself regardless of the eventual outcome of the prosecution.

A comprehensive analysis of DSA prosecutions during the 2018-2023 period reveals the systematic character of its use as a tool of political suppression. According to data compiled by the Centre for Governance Studies, a Bangladeshi research organization, more than 1,000 cases were filed under the DSA in its first three years of operation. Of these, the overwhelming majority targeted journalists, political opponents of the Awami League, and social media users who had posted critical content about the government. Very few cases targeted genuinely harmful digital conduct of the kind that the Act's supporters claimed to be its target.

Among the most egregious cases was the prosecution of Mushtaq Ahmed, a writer who was arrested in 2020 for Facebook posts criticizing the government's handling of the COVID-19 pandemic. Mushtaq was held in custody for more than nine months, denied bail repeatedly despite serious health concerns, and died in custody in February 2021, making him the first known victim of custodial death in a DSA case. His death provoked international outrage and became a symbol of the Act's capacity for lethal harm. The government's response to his death, which included denials of responsibility and obstruction of independent investigation, further illustrated the culture of impunity that surrounded the Act's enforcement.

The international response to the DSA was extensive. The UN Special Rapporteur on Freedom of Opinion and Expression, multiple UN treaty bodies, the European Union, and the governments of the United States and the United Kingdom all formally criticized the Act as

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incompatible with international human rights standards and Bangladesh's obligations under the International Covenant on Civil and Political Rights. Reporters Without Borders consistently ranked Bangladesh among the world's worst countries for press freedom, citing the DSA as the primary driver of this assessment.

3.2 The Cyber Security Act 2023: Reform as Continuity

The Cyber Security Act 2023, which was enacted ostensibly in response to international and domestic criticism of the DSA, replaced the DSA while largely reproducing its most constitutionally problematic provisions. Several of the most criticized offense definitions were retained with cosmetic modifications, the powers of warrantless arrest were maintained, and the structural features that made the Act amenable to abuse as a tool of political suppression were preserved. The primary changes were the reduction of maximum sentences for some offenses and the modification of certain procedural provisions, improvements that were real but insufficient to address the fundamental constitutional problems of the legislation.

The Cyber Security Act's passage through Parliament without meaningful debate, the absence of independent consultations with press freedom advocates, civil society, and legal experts in its drafting, and its immediate deployment against critics and journalists in the months following its enactment all demonstrated that the government's commitment to reform was cosmetic rather than substantive. The decision to rebrand rather than fundamentally reform the legislation reflected the government's assessment that international criticism could be managed through formal compliance with human rights discourse while the substantive practice of speech suppression continued.

From a constitutional theory perspective, the DSA and CSA raise a fundamental question about the limits of the "reasonable restriction" framework in Article 39(2). The constitution permits restrictions on freedom of expression in the interests of the security of the state, public order, decency, defamation, and similar grounds. The government's position was that the digital security legislation was a legitimate exercise of the legislature's power to impose reasonable restrictions in these interests. The constitutional counterargument is that the restrictions imposed by these legislative instruments were not reasonable in any constitutionally meaningful sense: they were not proportionate, in the sense that the restrictions on speech they imposed were far broader than necessary to achieve any legitimate governmental purpose; they were not clearly defined, in the sense that the offense definitions were so vague as to give law enforcement arbitrary power to determine what speech was criminal; and they were not employed in good faith, in the sense that the overwhelmingly political pattern of prosecutions demonstrated that the stated purposes of protecting security and public order were pretexts for the suppression of political criticism.

The Constitutional Reform Commission's proposals address the DSA/CSA problem by recommending the repeal of the CSA and its replacement with a genuinely rights-compliant digital security framework. The proposals recommend that any future legislation criminalizing digital speech must comply with international standards of necessity, proportionality, and clarity, must exclude vaguely defined offenses that can be applied to political speech, and must require judicial authorization for arrests and searches in connection with speech offenses. These

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recommendations represent a significant improvement in the constitutional framework for digital speech, but their implementation will require not merely legislative action but a fundamental change in the political culture that produced and sustained the DSA and CSA.

3.3 Freedom of the Press: Constitutional Guarantee and Political Reality

Article 39(2)(b) specifically guarantees freedom of the press, recognizing that the press has a distinct constitutional status as an institution rather than merely a collection of individuals exercising individual speech rights. The press performs a constitutional function in democratic governance: it provides the information citizens need to participate meaningfully in public life, it holds power accountable through investigative journalism, and it creates the public sphere in which democratic deliberation takes place. A free press is not merely instrumentally valuable for democracy; it is constitutively connected to what democratic self-governance means.

Bangladesh's press has been subjected to systematic political pressure throughout the country's constitutional history, but the degree and character of this pressure has varied significantly across different periods. During the Ershad military government of 1982-1990, press censorship was explicit and formal, with newspapers required to obtain government approval before publication. The restoration of parliamentary democracy in 1991 produced a period of relative press freedom that, while imperfect, allowed the development of a reasonably vigorous print press and, in later years, independent television broadcasting.

The deterioration of press freedom under the second period of Awami League governance, from 2009 to 2024, was documented extensively by domestic and international observers. This deterioration was not primarily the product of formal censorship, which would have been more legally vulnerable than the methods actually employed. Instead, it operated through a combination of mechanisms: the advertising dependency of newspapers on state-owned enterprises and businesses with government connections, which gave the government enormous leverage over editorial decisions; the ownership consolidation of media in the hands of businesspeople with close ties to the ruling party; the systematic use of the DSA and other legal instruments against critical journalists; the withdrawal of government advertising from newspapers that published critical coverage; and the physical intimidation and violence against journalists who persisted in their investigative work despite these pressures.

The constitutional framework for press freedom in Article 39 is formally strong but structurally inadequate to resist these subtle and systemic forms of press suppression. A constitutional guarantee of press freedom that is effective only against explicit censorship but incapable of addressing ownership concentration, advertising dependency, or legal harassment provides protection against the crudest forms of press suppression while leaving the press vulnerable to the more sophisticated and legally defensible forms.

The reform proposals include provisions for the protection of media independence, including regulations on media ownership concentration, requirements for transparent ownership disclosure, and the establishment of an independent self-regulatory press council. These provisions reflect recognition that the protection of press freedom requires structural intervention in the media market, not merely the formal prohibition of government censorship. However, the

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details of implementation, particularly the question of what ownership concentration triggers regulatory concern and how media regulation can be designed to protect rather than threaten editorial independence, remain to be worked out in the legislative process.

CHAPTER FOUR: FREEDOM OF RELIGION AND THE CONSTITUTIONAL RELATIONSHIP BETWEEN STATE AND FAITH

4.1 The Original Secularism and Its Constitutional Journey

The relationship between the state and religion is one of the most contested dimensions of constitutional politics in Bangladesh, and it is a relationship that has been directly written into and rewritten out of the constitutional text through successive amendments. Understanding this relationship requires tracing the constitutional history of secularism and religion from the original 1972 constitution through the military-era amendments to the current contested settlement.

The 1972 Constitution declared secularism as one of the four fundamental principles of the republic, alongside nationalism, democracy, and socialism. The constitutional secularism of 1972 was not, however, the strict separation of church and state associated with the American First Amendment tradition. It was, rather, a commitment to religious neutrality in governance and to the protection of the right of all citizens to profess and practice their religion freely. The drafters drew explicitly on the concept of sarva dharma samabhava, equal respect for all religions, rather than on Western models of strict church-state separation. This was an intelligible choice for a society where religion, particularly Islam, was deeply embedded in the culture and daily life of the majority population and where a commitment to the strict exclusion of religion from public life would have been both politically untenable and culturally inauthentic.

The Second Amendment of 1973 removed the explicit reference to secularism as a fundamental principle and replaced it with provisions that acknowledged the importance of religion in public life. The Fifth Amendment of 1979, passed under the military government of Ziaur Rahman, went further, removing secularism entirely from the constitution and adding a preamble invocation of bismillah, the Islamic blessing, and an affirmation that Islam is the state religion. The Eighth Amendment of 1988, under General Ershad, made the declaration of Islam as the state religion explicit in Article 2A.

These amendments created a constitutional structure in which secularism as an official constitutional value had been replaced by a form of constitutional acknowledgment of Islam's primacy while the fundamental rights chapter continued to guarantee freedom of religion for all citizens including non-Muslims. This combination, a state religion alongside a formal guarantee of religious freedom for minorities, is not unusual in comparative constitutional terms: many states that declare a state religion also maintain constitutional guarantees of religious liberty. The constitutional tension is manageable if the state religion declaration is purely symbolic and does not affect the state's treatment of religious minorities. It becomes problematic if the state religion

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declaration is used to justify preferential treatment for the majority religion or discrimination against religious minorities.

The Fifteenth Amendment of 2011, enacted under the Awami League government of Sheikh Hasina, restored secularism as a fundamental principle in Article 12 while retaining Article 2A's declaration of Islam as the state religion. This produced the constitutionally anomalous situation that remains in force today: a constitution that simultaneously commits the state to secularism and declares Islam as the state religion. The constitutional tension between these two provisions has never been resolved by the Supreme Court, partly because the court has generally avoided engaging with the most explosive constitutional questions in Bangladesh's political landscape and partly because the tension was arguably not accidental but rather a deliberate political compromise designed to satisfy simultaneously the secularist constituencies that supported the Awami League and the religious constituencies that could not accept the removal of Islam from the constitution.

4.2 Article 41: Freedom of Religion and Its Limitations

Article 41 of the Bangladesh Constitution guarantees to every citizen the right to profess, practice, or propagate any religion. It also guarantees the right of every religious community or denomination to establish, maintain, and manage its religious institutions. The limitations clause of Article 41(1) provides that this freedom is subject to law, public order, and morality.

The freedom to propagate religion, which is explicitly included in Article 41, has been the most controversial aspect of the constitutional religious freedom guarantee. In a society with a large Muslim majority, the constitutional protection for the propagation of other religions has been contested by those who argue that it threatens the dominant religious community. The tension between the constitutional guarantee of religious propagation and the offense of causing religious offense under various provisions of the Penal Code has been a source of recurring controversy.

The protection of non-Muslim religious minorities under Article 41 has been tested by repeated episodes of communal violence, often directed at the Hindu minority that constitutes approximately eight percent of Bangladesh's population, in the aftermath of political events. Temples, homes, and businesses of Hindu communities have been attacked during periods of political unrest, and the state's response to these attacks has been inconsistent. The constitutional guarantee of religious freedom includes an implied obligation on the state to provide effective protection against violence motivated by religious hostility, and the state's failure to consistently discharge this obligation represents a constitutional violation as well as a criminal justice failure.

The Ahmadiyya Muslim community, whose members number in the hundreds of thousands in Bangladesh, has faced particular discrimination and violence, with demands from some religious groups for the constitutional recognition of Ahmadiyyas as non-Muslims and the revocation of their rights to describe themselves as Muslims. This demand raises profound constitutional questions about the limits of majoritarian religious politics in a system that guarantees religious freedom: can the state constitutionally participate in a religious determination about who qualifies as a member of a religion, or does the constitutional separation between state and religious authority require the state to remain neutral on such questions?

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4.3 The Constitutional Reform Commission's Proposals on Religion and Secularism

The Constitutional Reform Commission's proposals on the relationship between state and religion are among the most sensitive and contested elements of the reform agenda. The commission recommended replacing the four original fundamental principles of nationalism, socialism, democracy, and secularism with five new principles: equality, human dignity, social justice, pluralism, and democracy. This replacement effectively removes secularism as an explicit constitutional value while introducing pluralism, which is intended to serve a similar function of ensuring respect for all religious and cultural traditions.

The commission also recommended redefining the concept of "secularism and freedom of religion" to mean "coexistence and due dignity of all communities," a definition that represents a significant departure from both the original constitutional secularism and from the Western secular constitutional tradition. This definition is more consistent with the Indian concept of sarva dharma samabhava than with strict secularism, and it reflects the commission's assessment that the Indian pluralist model is more appropriate for Bangladesh's specific religious and cultural context than any Western model of strict church-state separation.

The question of whether to retain or remove Article 2A's declaration of Islam as the state religion was one of the most contested issues in the National Consensus Commission's negotiations with political parties. The commission's report recommended the removal of the state religion provision as inconsistent with religious pluralism and equal treatment of all citizens regardless of religious affiliation. However, significant political opposition to this recommendation, particularly from the BNP and religious parties, prevented its inclusion in the July Charter as a consensus position. The referendum question therefore did not include the removal of the state religion provision, which means that Islam's constitutional status as the state religion will remain unchanged even after the implementation of the July Charter's other reforms.

This outcome illustrates the limits of constitutional reform in the face of deeply entrenched political and cultural realities. The constitutional recognition of Islam as the state religion is not merely a legal provision but a deeply symbolic affirmation that is widely valued in Bangladeshi society, and any attempt to remove it through a technically rational reform process without genuine popular support would be both politically unsustainable and democratically questionable. The challenge for constitutionalists is not to impose a predetermined constitutional model on Bangladesh's religious reality but to find constitutional frameworks that can both accommodate the reality of religion's importance in public life and genuinely protect the rights and dignity of all citizens regardless of their religious affiliation.

CHAPTER FIVE: ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: THE CASE FOR JUSTICIABILITY

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5.1 Part II and the Non-Justiciable Directive Principles: A Constitutional Architecture of Aspiration

Part II of the Bangladesh Constitution, encompassing Articles 8 through 25, contains what the constitution calls the Fundamental Principles of State Policy. These provisions articulate an extensive vision of social and economic rights: the right to food, clothing, shelter, education, and medical care (Article 15); the right to work as a fundamental human right (Article 20); the provision of basic necessities of life including food, clothing, shelter, education and medical care (Article 15); equal opportunities for women (Article 19(3)); free compulsory education (Article 17); the right to just and humane conditions of work and to maternity leave with pay (Article 14 and related provisions); the separation of the judiciary from the executive (Article 22); and the development of local government bodies (Article 11).

Article 8(2) explicitly provides that the principles in Part II "shall not be judicially enforceable," but declares that they "shall be fundamental to the governance of Bangladesh" and "it shall be the duty of the State to apply these principles in making laws." This declaration creates what has been called a "weak form" of constitutional rights: the provisions are constitutionally significant in the sense that they impose obligations on the state, but those obligations cannot be directly enforced through court action by individual citizens.

The jurisprudential status of Part II principles has evolved through the development of the doctrine of public interest litigation in the Bangladesh Supreme Court. In a series of decisions beginning in the 1990s, the Supreme Court developed the practice of entertaining petitions by public interest litigants on behalf of disadvantaged groups, and in this context it began to treat Part II principles as relevant interpretive guides for the construction of Part III rights, effectively giving the Part II principles a degree of indirect judicial relevance even if they remained formally non-justiciable.

The landmark decision in Dr. Mohiuddin Farooque v. Bangladesh (1997) illustrates this approach. The court entertained a public interest petition challenging the degradation of the environment and drew on the right to a sound environment implicit in the constitution's commitment to equitable distribution of resources and the right to a healthy life. While declining to declare the right to a clean environment a justiciable fundamental right under Part III, the court treated it as an implication of the right to life under Article 32, effectively expanding the justiciable content of Part III through interpretive connection to Part II principles.

This approach is jurisprudentially creative but constitutionally unstable. It depends on the court's willingness to draw expansive inferences from Part III rights in a manner that effectively incorporates Part II principles without formally transforming their constitutional status. Different benches have been more or less receptive to this interpretive strategy, producing inconsistency in the protection available to socio-economic rights. The Constitutional Reform Commission's proposal to unify Part II and Part III into a single enforceable Bill of Rights would resolve this instability by making the constitutional status of socio-economic rights clear and uniform.

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5.2 The South African Precedent and the Jurisprudence of Minimum Core Obligations

The South African Constitutional Court's jurisprudence on socio-economic rights provides the most developed and internationally influential precedent for the justiciable enforcement of rights to housing, health care, food, water, and social security. The South African Constitution of 1996, drafted in the context of the transition from apartheid and influenced by a constitutional assembly that was committed to a comprehensive vision of rights, made all of these socio-economic rights directly justiciable, subject to a general limitations clause and the qualification that the state must take "reasonable legislative and other measures" to achieve the progressive realization of socio-economic rights "within its available resources."

The Constitutional Court's landmark decisions in Government of the Republic of South Africa v. Grootboom (2000) and Minister of Health v. Treatment Action Campaign (2002) established the basic framework for socio-economic rights adjudication. In Grootboom, the court held that the state's housing program violated the constitutional right to housing because it failed to make reasonable provision for people in desperate need, even though the overall housing program was reasonable in the sense of making progress toward the realization of the right over time. The court declined to order the state to provide housing to specific individuals, but it did order the state to develop and implement a program that provided reasonable measures for people in desperate housing situations, a judicial remedy that was sensitive to institutional competence while still providing meaningful constitutional accountability.

The Treatment Action Campaign case went further, ordering the government to make the drug nevirapine available at all public hospitals and health clinics for the prevention of mother-to-child transmission of HIV, rejecting the government's argument that its existing program, which provided nevirapine only at a limited number of pilot sites, was a reasonable measure of progressive realization. The court found that the government's policy was unreasonable because it was not evidence-based, it was not sensitive to the urgency of the HIV/AIDS crisis, and it denied access to a critical life-saving medication to millions of people for reasons that were not constitutionally defensible.

The concept of minimum core obligations, developed by the UN Committee on Economic, Social and Cultural Rights and influential in South African jurisprudence, provides an important analytical tool for the enforcement of socio-economic rights. The minimum core of a right is the essential minimum content that states must respect regardless of resource constraints: for the right to food, the minimum core is freedom from starvation; for the right to health, it is access to basic health care without which life cannot be sustained; for the right to education, it is access to primary education. States that fail to meet the minimum core of a socio-economic right violate that right regardless of resource constraints, because the failure to prioritize the minimum core is itself a violation of the obligation to progressively realize the right.

The application of these principles to the Bangladesh context raises important questions about what the minimum core of the socio-economic rights included in the proposed unified Bill of Rights would require. Bangladesh is a lower-middle-income country with significant resource constraints, but it is not so resource-poor that it cannot meet minimum core obligations for all citizens. The chronic underfunding of public health care, public education, and social protection

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in Bangladesh reflects political priorities rather than absolute resource constraints, and constitutionally enforceable minimum core obligations could provide a framework for challenging the systematic underprovision of essential public services.

5.3 The Right to Food and the Politics of Hunger

Among the socio-economic rights recognized as a Fundamental Principle of State Policy in Article 15 of the Bangladesh Constitution, the right to food has perhaps the most direct connection to the basic survival of large numbers of citizens. Bangladesh has made significant progress in reducing food insecurity over the past three decades, but malnutrition remains a serious public health problem, particularly among children and among the rural poor.

The constitutional framework for the right to food in Bangladesh is complicated by several factors. The non-justiciable status of Article 15's food security provision means that individuals who are denied access to adequate food have no direct constitutional remedy. The government's food security programs, while extensive, have been subject to significant leakage, corruption, and inefficiency that has reduced their effectiveness in reaching the most vulnerable populations. The impact of climate change on food production, through rising sea levels, more frequent and severe flooding, and changing rainfall patterns, creates structural challenges to food security that require long-term constitutional and policy responses.

The proposed constitutional reforms include the right to food as one of the socio-economic rights to be included in the unified enforceable Bill of Rights. The question of what this means in practice is one of the most important issues in the implementation of the reform. A justiciable right to food does not require courts to order the government to provide food directly to every hungry person, which would be administratively unmanageable and fiscally unbudgeable. Rather, it requires courts to scrutinize the government's food security programs against the standard of reasonable measures for progressive realization, and to intervene when programs are unreasonably designed, arbitrarily administered, or systematically exclude vulnerable groups who have an urgent need.

5.4 The Right to Education: Constitutional Provision, Practical Reality, and Reform Imperative

Article 17 of the Bangladesh Constitution directs the state to establish a uniform, mass-oriented, and universal system of education, and to extend free and compulsory education to all children to such level as may be determined by law. This provision has been the basis for significant government investment in primary education over the past three decades, with primary school enrollment rates approaching near-universal levels by the 2010s.

However, the quantitative success of enrollment conceals significant qualitative failures. The quality of public education, particularly at the primary and secondary levels, remains seriously inadequate. Teacher training, curriculum development, learning materials, and school infrastructure are all chronically underfunded. Learning outcomes, as measured by literacy and numeracy assessments, are significantly below the levels that the constitutional aspiration for universal quality education would require. The gap between the quality of education available to

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wealthy families, who can afford private schooling, and to poor families, who depend on the public system, represents a profound educational inequality that the constitutional aspiration for universal education has failed to address.

The existence of multiple parallel education systems, including the mainstream government curriculum, the Madrasa system, and the English-medium private school system, creates enormous fragmentation in the national education system that complicates both the constitutional aspiration for a "uniform" system and the practical project of ensuring that all children receive an education that equips them for full participation in social, economic, and political life. The constitutional treatment of religious education, particularly the Madrasa system, raises complex questions about religious freedom, minority rights, and the state's interest in a coherent national education system.

CHAPTER SIX: THE RIGHT TO PRIVACY, DIGITAL RIGHTS, AND THE CONSTITUTIONAL FRONTIER

6.1 Privacy as a Constitutional Right: The Doctrinal Development

Privacy is not explicitly guaranteed as a fundamental right in the original text of the Bangladesh Constitution. This is not unusual: many constitutions of the 1970s generation do not contain explicit privacy provisions, reflecting the state of constitutional law at the time of their drafting. The right to privacy has emerged as an implied constitutional right through judicial interpretation in many constitutional systems, derived from provisions protecting personal liberty, dignity, and freedom from arbitrary state interference.

The development of a constitutional right to privacy in Bangladesh has been tentative and underdeveloped compared with the jurisprudential evolution in India, where the Supreme Court's landmark decision in K.S. Puttaswamy v. Union of India in 2017 recognized privacy as a fundamental right under Article 21 of the Indian Constitution. The Puttaswamy decision was a comprehensive and philosophically sophisticated treatment of privacy as a multi-dimensional constitutional right, encompassing informational privacy, decisional privacy, and bodily integrity, and recognizing privacy as essential to the autonomous exercise of all other fundamental rights.

The Bangladesh Supreme Court has on occasion recognized privacy interests in the context of Article 32's protection of personal liberty, but has not developed a comprehensive privacy jurisprudence. The cases that have raised privacy issues include cases concerning the protection of personal information, the right of individuals to control their own medical decisions, and the constitutional limits on state surveillance. In each of these areas, the court has acknowledged privacy interests without articulating a clear constitutional doctrine that would provide reliable guidance for future cases.

The absence of an explicit constitutional right to privacy has had significant practical consequences in the context of the development of the Bangladeshi state's digital surveillance

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capabilities. The government's investment in digital surveillance infrastructure, including CCTV networks, social media monitoring, and telecom metadata collection, has proceeded without constitutional authorization or constitutional limitation. The National Database of registered citizens, the digital national identity card system, and the extensive biometric data collection program have created the infrastructure for a surveillance state of significant reach, and the legal framework governing the collection, storage, use, and protection of this personal data is inadequate by any standard of modern privacy law.

6.2 The Right to Internet Access: A New Constitutional Frontier

The Constitutional Reform Commission's proposal to include the right to uninterrupted internet service as a new fundamental right represents one of the most significant and controversial innovations in the proposed reform package. This proposal has no direct precedent in the constitutional law of other South Asian countries, though Finland and several other European countries have enacted statutory rights to internet access, and international human rights bodies have increasingly recognized internet access as a precondition for the exercise of freedom of expression and other rights in the digital age.

The conceptual foundation for a constitutional right to internet access is strong. In the contemporary world, the internet is the primary medium through which people access information, communicate with each other, participate in public discourse, and exercise many other constitutional rights. Restricting internet access is therefore not merely a limitation on a technological service but a restriction on the exercise of constitutional rights including freedom of expression, freedom of association, access to information, and participation in economic and social life. The UN Human Rights Council has repeatedly affirmed that the same rights people have offline must also be protected online.

The Bangladesh government's use of internet shutdowns as a tool of political control has been one of the most dramatic illustrations of why a constitutional right to internet access matters. During the July-August 2024 protests, the government imposed a complete internet shutdown that lasted for several days, cutting millions of citizens off from communication with the outside world, from information about what was happening in their own country, and from the ability to exercise their constitutional right to freedom of expression. This shutdown was not merely a service disruption; it was a deliberate act of political suppression designed to prevent the organization and communication of the protest movement.

The proposal to constitutionalize the right to internet access faces several objections that deserve serious engagement. The first objection is that internet access is a service provided by commercial entities and that the state cannot be constitutionally obligated to ensure its provision. The response is that the constitutional obligation need not be framed as a positive duty to provide internet access but rather as a negative obligation not to interfere with access that individuals can obtain through commercial providers. The core of the right, on this understanding, is protection against state-imposed shutdowns and restrictions, which is a classic negative rights obligation that requires no positive provision by the state.

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The second objection is that internet access may sometimes legitimately be restricted for security reasons, and that a constitutional right to uninterrupted service would prevent the government from taking necessary security measures. This objection is met by the fact that virtually all constitutional rights are subject to proportionate limitations in the interests of security, and a constitutional right to internet access need not be absolute any more than freedom of expression is absolute. The constitutional framework would require the government to justify any internet restriction as a proportionate response to a genuine security threat, which is a far higher standard than the current absence of any legal constraint on internet shutdowns.

The third objection is that the right is too vague and technologically specific to serve as a durable constitutional provision. This is a legitimate concern: constitutional provisions that are expressed in terms of specific technologies may become obsolete or may not extend naturally to new technological forms of the same underlying activity. The response is to frame the right in terms of the underlying interest, access to digital communications and information networks, rather than in terms of a specific technology, so that the right evolves with the technology rather than being frozen at the technology of 2025.

6.3 The Right to Data Protection: Constitutional Design for the Information Age

The proposal to include a constitutional right to personal data protection is even more legally innovative than the internet access right, and it responds to one of the most important regulatory challenges of the twenty-first century. Personal data has become one of the most valuable assets in the contemporary economy, and the collection, processing, and use of personal data by both states and private corporations raises profound questions about individual autonomy, privacy, and dignity.

The constitutional right to data protection, as proposed by the reform commission, would require the state to establish a legal framework for the protection of personal data that meets international standards, including the principles of purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality, and individual rights to access, correction, and erasure of personal data. It would also constrain the state's own collection and processing of personal data, requiring that state surveillance activities be authorized by law, be subject to independent oversight, and be proportionate to the legitimate security objectives pursued.

The European Union's General Data Protection Regulation of 2018 provides the most comprehensive contemporary model for data protection law, and its principles have been influential globally, including in the legal systems of many non-EU countries that have enacted data protection legislation modeled on or compatible with GDPR. Bangladesh does not currently have comprehensive data protection legislation, and the proposed constitutional provision would create the impetus and the constitutional foundation for its development.

The challenge of designing constitutional data protection rights that are effective in the Bangladesh context is significant. The data protection framework must be robust enough to provide genuine protection for individuals against both state and corporate surveillance, while being practically enforceable given the relatively limited regulatory capacity of the Bangladeshi

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state. It must also be designed in a way that does not unduly hamper the development of the digital economy, which is increasingly important for Bangladesh's economic growth and for the livelihoods of millions of people who work in technology-related sectors.

CHAPTER SEVEN: EMERGENCY POWERS AND THE SUSPENSION OF RIGHTS

7.1 Article 141: The Constitutional Framework for Emergency

Article 141A of the Bangladesh Constitution authorizes the President to proclaim a state of emergency if the security or economic life of Bangladesh or any part thereof is threatened by war, external aggression, or internal disturbance. During an emergency, Articles 141B and 141C allow for the suspension of fundamental rights guarantees and for Parliament to make laws that it could not otherwise make consistently with the fundamental rights chapter.

The emergency provisions represent the most acute tension in any constitutional framework: the recognition that extraordinary circumstances may require extraordinary measures, combined with the recognition that the power to declare emergencies is itself a potential tool of authoritarian abuse. Constitutional emergency law must be designed to permit genuinely necessary responses to genuine emergencies while preventing the emergency power from being invoked to justify the permanent suppression of constitutional rights under the guise of temporary necessity.

Bangladesh's constitutional history includes several episodes of emergency declaration that illustrate both the legitimate use and the abusive use of emergency powers. The 2007-2008 period of military-backed caretaker government, which preceded the election of Sheikh Hasina's Awami League government, involved the declaration of a state of emergency under Article 141A that was used to suspend political activities, detain political leaders and businesspeople charged with corruption, and govern the country through executive decree without effective parliamentary oversight. While the emergency was formally lifted with the 2008 general elections, its legacy included a significant expansion of executive capacity and a culture of emergency governance that influenced the subsequent years of Awami League rule.

The proposed constitutional reforms address the emergency power framework in several important ways. The most significant reform proposal is the requirement that a declaration of emergency must receive the approval not merely of the cabinet but also of the leader and deputy leader of the opposition, a provision designed to prevent the government from using emergency powers against its political opponents without bipartisan consent. This reform reflects the recognition that emergency powers have historically been used most abusively in exactly the situations where the governing party sought to use extraordinary executive authority against political opposition.

The proposal to prevent the curtailment of fundamental rights during a state of emergency represents an even more significant constitutional innovation. Under the existing framework, the declaration of emergency permits the suspension of most fundamental rights. Under the proposed framework, fundamental rights would remain in force during an emergency, though the state

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would presumably retain the ability to impose proportionate limitations on rights in response to the circumstances that justified the emergency declaration. This reform would mark a fundamental shift in Bangladesh's constitutional approach to the relationship between rights and emergency, bringing it closer to the approach of the South African Constitution, which explicitly provides that certain rights including the right to dignity, the right to life, and the prohibition on torture cannot be derogated from even during a state of emergency.

7.2 Special Security Legislation and the Permanent State of Exception

Beyond the formal emergency provisions of Article 141, Bangladesh's constitutional history is characterized by the development of a permanent body of special security legislation that operates outside the normal constitutional framework and effectively creates what political theorist Giorgio Agamben has called a "permanent state of exception" in which the executive exercises extraordinary powers without the formal declaration of emergency.

This permanent state of exception has been constructed through a succession of legislative instruments: the Special Powers Act 1974, which authorized preventive detention without trial; the Public Safety Act 2000; the Emergency Powers Rules 2007; the Anti-Terrorism Act 2009; and the Digital Security Act 2018. Each of these instruments has provided legal authorization for executive action that would otherwise violate fundamental rights, dressed in the constitutional garments of a reasonable restriction under Article 26's savings clause.

The Special Powers Act 1974 deserves particular examination as the founding instrument of Bangladesh's permanent state of exception. Enacted in the first years of the republic under the Awami League government of Sheikh Mujibur Rahman, the SPA authorized the government to detain any person for up to thirty days without producing them before a court, renewable by the government indefinitely upon review, on suspicion of acting in a manner prejudicial to the state. The grounds for detention were defined so broadly as to give the executive essentially unlimited power to detain anyone it chose: "prejudicial activity" was defined to include activities that might threaten the security of Bangladesh, undermine the foundations of the state, create hostility between citizens, disturb public order, or damage national interest or prestige.

The SPA has been used by virtually every government in Bangladesh's history to detain political opponents, journalists, trade union activists, and others whose activities were inconvenient to those in power. Despite repeated calls for its repeal by human rights organizations and despite constitutional challenges that have occasionally been partially successful, the Act remains in force fifty years after its enactment, testimony to the difficulty of eliminating security legislation once it has become a tool of governance.

The Constitutional Reform Commission's proposals do not explicitly address the continued existence of the Special Powers Act, focusing instead on the constitutional framework for emergency powers and on the reform of digital security legislation. This omission is a significant gap in the reform agenda: a constitutional framework that expands and strengthens fundamental rights while leaving in place the legislative infrastructure of the permanent state of exception will be unable to deliver the genuine rights protection that the reform process aims to achieve.

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CHAPTER EIGHT: PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM IN RIGHTS ENFORCEMENT

8.1 The Development of Public Interest Litigation in Bangladesh

Public interest litigation, known in Bangladesh as writ jurisdiction under Article 102 of the Constitution, has been the primary vehicle through which the Supreme Court has developed an expanded interpretation of fundamental rights and has engaged with socio-economic rights claims that fall outside the strict justiciable framework of Part III. The development of PIL in Bangladesh has followed a broadly similar trajectory to its development in India, where the Supreme Court's expansive interpretation of locus standi and the development of the suo motu jurisdiction transformed constitutional litigation from a mechanism available only to those with specific legal standing into a vehicle through which public interest advocates and affected communities could seek judicial intervention on behalf of vulnerable groups.

The watershed moment in the development of PIL jurisdiction in Bangladesh was the High Court Division's decision in Dr. Mohiuddin Farooque v. Bangladesh (1996), which established that organizations with genuine public interest, rather than merely individuals with personal legal standing, could file writs under Article 102 on behalf of groups affected by governmental actions that violated constitutional rights or were contrary to law. This expansive interpretation of locus standi opened the constitutional courts to a much wider range of claims and petitioners and transformed the character of constitutional litigation in the country.

Among the most significant areas of PIL development have been environmental litigation, labor rights cases, cases challenging illegal evictions and displacement of poor communities, and cases challenging the constitutionality of specific legislative provisions. In the environmental domain, the courts have addressed issues including air pollution, water contamination, deforestation, and the protection of the Sundarbans mangrove forest through PIL petitions filed by environmental organizations and public interest advocates. While the judicial remedies in these cases have not always been fully effective in changing actual environmental outcomes, they have established important precedents for constitutional accountability in environmental governance and have created spaces for civil society advocacy within the judicial system.

The development of PIL has, however, also raised concerns about judicial overreach and about the consistency and quality of judicial reasoning in PIL cases. The relative informality of PIL proceedings, combined with the broad remedial powers of the High Court Division under Article 102, has sometimes produced judicial interventions that are more politically driven than legally principled. The risk of what legal scholars call "judicial populism," in which courts issue broad remedial orders that generate public approval without genuine constitutional grounding or practical enforceability, is a recurring criticism of PIL practice in Bangladesh as in India.

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8.2 The Writ Jurisdiction and Its Constitutional Limits

The Supreme Court of Bangladesh exercises writ jurisdiction under Article 102(1), which authorizes the High Court Division to issue directions, orders, or writs including the writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto. This jurisdiction is exercisable in relation to any person performing functions in connection with the affairs of the Republic or a local authority, and in relation to any court or tribunal, for the enforcement of any of the fundamental rights conferred in Part III.

The territorial and institutional scope of this writ jurisdiction has been expanded through judicial interpretation to reach a wide range of governmental functions, including functions performed by ostensibly private entities that exercise public functions or that are sufficiently connected to the state apparatus. This expansion is generally consistent with the constitutional purpose of the writ jurisdiction, which is to provide effective judicial enforcement of constitutional rights against all those who exercise public power, regardless of the formal legal character of their authority.

The practice of issuing rule nisi directions, by which the High Court Division calls upon the government to show cause why a particular order should not be made, has become a significant tool of constitutional accountability in Bangladesh. Rule nisi proceedings allow petitioners to invoke the court's jurisdiction and obtain at least a formal constitutional engagement with their claims, even in cases where the ultimate order may take considerable time to arrive. The court's issuance of rule nisi in connection with the constitutional challenge to the July National Charter Implementation Order 2025, noted earlier in this Part, is an example of the writ jurisdiction being exercised in relation to one of the most politically sensitive constitutional questions of the current period.

CHAPTER NINE: MINORITY RIGHTS AND INDIGENOUS PEOPLES' CONSTITUTIONAL CLAIMS

9.1 The Constitutional Framework for Minority Protection

The Bangladesh Constitution's provisions on minority rights operate primarily through the general equality and non-discrimination guarantees of Articles 27-29 and the religious freedom guarantee of Article 41, rather than through specific minority rights provisions. This general framework, which treats minorities as having the same individual rights as all other citizens rather than as having distinctive group rights that reflect their minority status, is characteristic of liberal constitutional systems that prioritize individual equality over group differentiation.

The adequacy of this general framework for the protection of minority rights in Bangladesh has been persistently contested. Religious minorities, particularly Hindus, Buddhists, and Christians, face patterns of discrimination and violence that general equality guarantees have proven insufficient to address. The Hindu minority's experience of systematic property dispossession under the Vested Property Act, which allowed property owned by persons deemed to be enemy aliens (a category that in practice applied primarily to Hindus who had emigrated to India) to be

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vested in the state and subsequently distributed to Awami League supporters, is one of the most significant instances of state-sanctioned minority rights violation in Bangladesh's constitutional history.

The Vested Property Act, originally enacted during the Pakistani period and continued in Bangladesh under successive governments, was eventually repealed in 2001 and replaced with the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, but the implementation of the repeal law has been deeply inadequate. Many Hindu families dispossessed of their property over decades have never recovered it, and the legal process for recovering vested properties has been slow, expensive, and systematically biased against claimants.

The constitutional dimension of the vested property controversy illustrates a broader pattern: the formal constitutional guarantee of equality is insufficient to protect minority rights when the specific legal mechanisms through which minority property and other interests are protected are systematically biased against them. Constitutional reform that addresses only the formal framework without attending to these specific mechanisms will provide only illusory protection.

9.2 The Chittagong Hill Tracts: Indigenous Rights and Constitutional Recognition

The Chittagong Hill Tracts Peace Accord of 1997 represented a significant step toward the constitutional recognition of indigenous peoples' rights in Bangladesh, but its implementation has been deeply inadequate. The Accord promised the establishment of elected Hill District Councils with genuine autonomy, the withdrawal of military forces from civilian areas, the rehabilitation of displaced persons, and the return of land to indigenous communities that had been displaced by Bengali settlers during the 1970s and 1980s. Nearly three decades after the Accord was signed, most of these commitments remain unfulfilled.

The constitutional status of the Peace Accord is contested. The Accord was signed by the government of Sheikh Hasina in her first term as Prime Minister, and it has been implemented unevenly under successive governments, with both the BNP and the Awami League governments showing limited enthusiasm for its more demanding provisions. The absence of constitutional recognition for indigenous rights means that the Accord's provisions lack constitutional entrenchment and are vulnerable to legislative modification or executive non-implementation without constitutional remedy.

The Constitutional Reform Commission's proposals for constitutional recognition of indigenous peoples go further than any previous official constitutional document in Bangladesh. The proposed recognition of all mother languages spoken in Bangladesh as state languages, while primarily symbolic, is significant as a formal acknowledgment of Bangladesh's linguistic diversity. More substantively, the proposals include provisions for the protection of indigenous cultural practices and for the strengthening of the Hill District Councils' autonomy.

However, indigenous rights advocates have argued that the commission's proposals fall short of international standards for indigenous rights protection. The United Nations Declaration on the Rights of Indigenous Peoples, which Bangladesh endorsed in 2007, requires free, prior, and informed consent by indigenous communities for development projects and other activities that

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affect their lands and resources. This principle of FPIC is not included in the proposed constitutional reforms, leaving indigenous communities' land and resource rights without adequate constitutional protection against future development projects that may threaten their livelihoods and cultural survival.

CHAPTER TEN: GENDER JUSTICE AND CONSTITUTIONAL EQUALITY: BEYOND FORMAL EQUALITY

10.1 Women's Constitutional Rights: The Gap Between Provision and Reality

The Bangladesh Constitution's provisions on gender equality are formally among the most comprehensive in South Asia. Article 28(2) provides that women shall have equal rights with men in all spheres of state and of public life. Article 28(4) authorizes special provisions for women and children. Article 19(3) directs the state to ensure equal opportunities for women. These provisions, if fully implemented, would constitute a strong constitutional framework for gender equality.

The reality of women's legal and social status in Bangladesh is dramatically at odds with this formal constitutional framework. Despite significant improvements in women's education and labor force participation over the past three decades, women continue to face systematic discrimination in employment, pervasive gender-based violence, inadequate representation in political and public life, and deep structural inequalities embedded in personal law governing marriage, divorce, and inheritance.

The political representation of women in parliament is formally supported by a system of reserved seats: Article 65(3) provides for 50 reserved seats for women in a parliament of 350 members, which would give women approximately 14 percent of seats if no women were elected in open constituencies. The actual percentage of women in parliament has been higher in recent years, partly because women have won seats in open constituencies, but the reserved seat mechanism has been criticized as inadequate both in scale and in design. The reserved seats are filled by proportional allocation among parties represented in parliament, meaning that women in reserved seats are party nominees rather than directly elected by constituencies, which limits their accountability to voters and their political independence.

The Constitutional Reform Commission's proposals significantly expand women's representation: the proposed 400-member lower house would include 100 directly elected women members from single-member constituencies, and there would be additional women representation in the proposed upper house. This structural change, from reserved seats filled by party allocation to directly elected seats, would significantly strengthen the democratic accountability and political independence of women parliamentarians and would represent a major advance in the constitutional framework for women's political representation.

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10.2 Personal Law, Formal Equality, and the Limits of Constitutional Reform

The most significant obstacle to genuine constitutional equality for women in Bangladesh is the system of religious personal law that governs marriage, divorce, and inheritance for all communities. Under this system, Muslim women are subject to Muslim family law as interpreted and applied by the family courts, Hindu women are subject to uncodified Hindu customary law, and Christian women are subject to the Christian Marriage Act and related legislation. Each of these legal regimes contains provisions that treat women less favorably than men: Muslim divorce law gives husbands easier access to divorce than wives, though the Dissolution of Muslim Marriages Act 1939 provides some avenues for wives; Hindu inheritance law in its traditional form did not give daughters equal shares with sons; Christian marriage law contains provisions that reflect nineteenth-century social norms about gender roles.

The constitutional tension between the equality guarantee of Articles 27-28 and the system of religious personal law has never been definitively resolved by the Bangladesh Supreme Court. The court has generally avoided directly confronting the question of whether discriminatory provisions of personal law violate the constitutional equality guarantee, treating personal law as a domain in which religious freedom considerations override formal equality requirements. This approach, while politically understandable, is constitutionally untenable: if the constitution genuinely guarantees equal rights for women in all spheres of state and public life, this guarantee cannot be suspended whenever it conflicts with religiously sanctioned discrimination.

The debate about a Uniform Civil Code, which would replace religious personal law with a single secular family law applicable to all citizens, has been live in India for decades but has barely begun in Bangladesh's constitutional discourse. The political sensitivity of this issue, particularly in a society where Islamic identity is deeply connected to personal law, means that a Uniform Civil Code is politically impractical in the near term regardless of its constitutional merits. What is more practically achievable is a program of progressive reform of each religious personal law system in the direction of greater equality, undertaken in consultation with religious communities and framed in terms of Islamic jurisprudential arguments for gender equality rather than in terms of a secular challenge to religious law.

CHAPTER ELEVEN: THE REFORM OF PART III: THE UNIFIED BILL OF RIGHTS AND ITS DESIGN CHALLENGES

11.1 The Constitutional Reform Commission's Proposals: A Critical Evaluation

The Constitutional Reform Commission's recommendation to unify Part II and Part III of the constitution into a single enforceable Bill of Rights is, as noted throughout this Part, the most philosophically significant proposal in the entire reform package. It represents a fundamental shift in the constitutional philosophy underlying Bangladesh's rights framework, from a dualist structure that distinguishes between justiciable civil and political rights and non-justiciable social and economic aspirations to a unified framework that treats all of the listed rights as legally enforceable entitlements.

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The case for this unification, as argued throughout this Part, is strong: the philosophical distinction between negative and positive rights has been extensively criticized; the capability approach and the social democratic rights tradition demonstrate that socio-economic rights can be made justiciable without overwhelming the courts or creating unsustainable fiscal demands; and the South African precedent demonstrates that a well-designed socio-economic rights framework can provide meaningful accountability for the progressive realization of rights while preserving appropriate institutional competence for the legislature and executive in policy-making.

However, the details of implementation matter enormously, and several design challenges must be addressed if the unified Bill of Rights is to function effectively. The first challenge is the formulation of the rights themselves. Socio-economic rights can be formulated in ways that are more or less amenable to judicial enforcement: a right to "adequate housing" is more amenable than a right to "a house," and a right to "progressive realization of the right to health" is more amenable than a right to "optimal health." The formulations chosen by the commission, while broadly consistent with international standards, will need to be refined through the legislative drafting process.

The second challenge is the development of a sophisticated limitations clause that can operate across the full range of rights in the unified Bill. The existing Article 26 savings clause is designed for a civil and political rights framework and is not well suited to socio-economic rights, which require a different kind of limitation analysis: the question of whether a government has progressively realized the right to housing given available resources is a different kind of question from whether a government has unjustifiably limited freedom of expression. The limitations clause must be designed to accommodate both kinds of rights analysis while providing clear constitutional standards for judicial review.

The third challenge is institutional: the Bangladesh Supreme Court does not currently have the expertise, the capacity, or the developed body of doctrine that would allow it immediately to take on the judicial review of socio-economic rights claims in the full range contemplated by a unified Bill of Rights. The development of this judicial capacity will require investment in judicial education and research, the development of a specialized constitutional bench or division, and the accumulation of a body of decisions that develops the doctrine progressively. This institutional development will take time and cannot be short-circuited by constitutional text alone.

11.2 New Rights for the Twenty-First Century: Internet, Privacy, and the Environment

Beyond the proposed unification of civil, political, and socio-economic rights, the reform proposals include several new rights that represent the constitutional agenda of the twenty-first century. The proposed right to a clean environment, while not mentioned explicitly in the July Charter, has been advocated by the commission and by environmental organizations as a necessary constitutional response to the climate crisis, which poses existential threats to Bangladesh's territory, livelihoods, and way of life.

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Bangladesh is among the countries most severely affected by climate change. Sea level rise threatens coastal communities and agricultural land. More frequent and severe cyclones and floods cause devastating human and economic losses. Saline intrusion into coastal aquifers threatens both agriculture and drinking water supplies. Temperature rises affect agricultural productivity and human health. These climate impacts are not abstract future possibilities but present realities that affect the daily lives of millions of Bangladeshis.

The constitutional recognition of a right to a clean and healthy environment, increasingly recognized in constitutional systems across the world, would provide a legal framework for holding the state accountable for its environmental governance and for challenging development decisions that impose disproportionate environmental costs on vulnerable communities. It would also provide a constitutional mandate for Bangladesh's engagement with international climate agreements and for the implementation of climate adaptation and mitigation policies.

The right to a clean environment raises particularly complex constitutional questions about intergenerational rights: do future generations of Bangladeshis have constitutional rights to an environment that will sustain their lives and livelihoods? If so, how are those rights to be represented and enforced in legal proceedings brought by and for currently living people? The intergenerational dimension of environmental rights has been explored in developing case law from the Philippines, Colombia, and elsewhere, and the Bangladesh Supreme Court's PIL jurisdiction provides a vehicle for developing similar jurisprudence in the Bangladeshi context even in the absence of an explicit constitutional environmental right.

11.3 The Enforcement Gap: Institutional Design and Implementation

The most persistent challenge in fundamental rights law is not the formulation of rights but their enforcement. The history of the Bangladesh Constitution amply demonstrates that even strong constitutional rights guarantees can be systematically violated when the institutional conditions for their enforcement are absent. A reformed and expanded Bill of Rights will only deliver its constitutional promise if it is supported by institutional mechanisms that genuinely enable rights enforcement.

The primary mechanism for fundamental rights enforcement in Bangladesh is the writ jurisdiction of the Supreme Court under Article 102. This jurisdiction is constitutionally important but practically limited: access to the Supreme Court requires legal representation and the capacity to navigate complex procedural requirements, which effectively excludes the majority of the population whose rights are most vulnerable to violation. Legal aid, public interest litigation, and access to justice reforms are therefore preconditions for the effective constitutional protection of fundamental rights, particularly for the poor and marginalized.

The proposed constitutional reforms include provisions for strengthening the independence and capacity of the judiciary, including new mechanisms for judicial appointments, enhanced security of tenure, and increased judicial funding. These provisions are essential prerequisites for the effective enforcement of constitutional rights: a judiciary that is financially dependent on the executive, subject to political interference in appointments, and chronically understaffed cannot provide genuine constitutional protection.

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Beyond the judiciary, the effective enforcement of fundamental rights requires a robust institutional ecosystem including an independent human rights commission with genuine investigative powers and the capacity to provide remedies; an independent ombudsman empowered to investigate constitutional complaints against government agencies; legal aid services capable of providing effective representation to those whose rights are violated; and a free press and active civil society that can monitor and publicize rights violations and hold power accountable through public discourse.

The National Human Rights Commission of Bangladesh, established in 2009, has been chronically underfunded, has lacked genuine independence from the executive, and has been unable to provide effective remedies in the cases it has investigated. The constitutional reform proposals include provisions for strengthening the NHRC's independence and powers, but the effectiveness of these provisions will depend on the political will to fund and support an institution that may frequently find itself investigating the conduct of the very government that controls its budget.

CHAPTER TWELVE: COMPARATIVE PERSPECTIVES ON FUNDAMENTAL RIGHTS: LESSONS FOR BANGLADESH

12.1 The German Model: Proportionality, Dignity, and the Basic Law

The German Basic Law of 1949, enacted under Allied occupation after the catastrophic failure of the Weimar Republic's constitutional order, represents one of the most sophisticated and influential constitutional frameworks for fundamental rights in the world. Its influence has been felt throughout Europe and increasingly globally, particularly through the development of the proportionality doctrine that originated in German constitutional jurisprudence.

The Basic Law's foundational commitment to human dignity in Article 1(1) represents a constitutional philosophy that treats dignity not merely as one value among many but as the foundational value from which all specific rights derive their meaning and from which no derogation is permissible. Article 1(1) declares that human dignity shall be inviolable and that it shall be the duty of all state authority to respect and protect it. The Federal Constitutional Court has interpreted this provision as an absolute constitutional guarantee that cannot be outweighed by any other constitutional value, not even by competing constitutional rights or interests of the community.

The German rights framework is characterized by several features that are relevant for Bangladesh's constitutional reform. First, the detailed enumeration of specific rights in Articles 1-19 provides a comprehensive constitutional catalogue that leaves relatively little to judicial implication. Second, the general limitation clause of Article 19(2), which provides that no fundamental right may be impaired in its essential content, establishes a floor below which no legislative limitation of fundamental rights can go. Third, the Federal Constitutional Court's development of proportionality as the standard of judicial review of rights limitations has created

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a sophisticated and principled framework that has been widely adopted in other constitutional systems.

The German model's emphasis on dignity has direct relevance for Bangladesh, where the dignity dimension of constitutional rights has been inadequately developed. Constitutional provisions protecting dignity are found in many contemporary constitutions, including the South African Constitution and the Indian Constitution, and the Bangladesh Supreme Court has occasionally invoked dignity language in its rights jurisprudence. A more explicit and systematic constitutional commitment to human dignity as the foundational value of the rights framework would strengthen the philosophical coherence of Bangladesh's constitutional rights law and provide a firmer basis for expanding the scope of judicial protection.

12.2 The South African Model: Transformative Constitutionalism and Social Rights

The South African Constitution of 1996 has become the most frequently cited comparative model for post-colonial constitutions seeking to combine civil and political rights with economic and social rights in a unified enforceable framework. Its influence on Bangladesh's current reform process is evident in the commission's proposals for a unified Bill of Rights, and a more detailed examination of the South African model is therefore warranted.

The South African Constitution was drafted in the context of the transition from apartheid, and its rights provisions reflect the aspirations of a society seeking to transform deeply unequal social relations rather than merely to protect existing freedoms. The concept of "transformative constitutionalism," developed by South African constitutional scholars including Karl Klare and Theunis Roux, holds that the Constitution is not merely a constraint on state power but an affirmative commitment to social transformation, and that constitutional interpretation must be guided by the long-term goal of achieving a just and equal society rather than merely preserving existing arrangements.

This transformative understanding of constitutional rights has direct relevance for Bangladesh, where centuries of social inequality, colonial exploitation, and post-colonial governance failures have produced deep structural inequalities that cannot be addressed merely by prohibiting discrimination and protecting negative liberties. A transformative rights framework for Bangladesh would require constitutional interpretation that actively promotes the social and economic conditions for genuine equality and freedom, rather than merely prohibiting the most egregious forms of state interference with existing distributions of advantage.

The South African Constitutional Court's development of the concept of reasonable legislative and other measures as the standard for evaluating compliance with socio-economic rights is particularly relevant for Bangladesh. The court has interpreted this standard as requiring that the state develop and implement a coherent program for the realization of each socio-economic right, that this program be evidence-based, that it provide for the needs of the most vulnerable, and that it be subject to ongoing review and improvement. This is a demanding but achievable standard that preserves appropriate institutional competence for the legislature while providing meaningful constitutional accountability.

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12.3 The Indian Model: Constitutional Evolution and the Living Constitution

India's constitutional experience over seven decades provides perhaps the richest comparative resource for Bangladesh's constitutional development, given the historical and institutional connections between the two legal systems. The Indian Constitution of 1949, like the Bangladesh Constitution, established a framework of justiciable fundamental rights alongside non-justiciable directive principles, and the evolution of the Indian Supreme Court's interpretation of both has produced a rich and complex body of doctrine that is directly relevant to Bangladesh.

The Indian Supreme Court's landmark decisions on the right to life and personal liberty under Article 21 represent the most significant expansion of fundamental rights through judicial interpretation in any constitutional system. Beginning with Maneka Gandhi (1978) and continuing through a series of decisions that collectively recognized rights to livelihood, health, education, and a clean environment as implications of the right to life, the Indian court transformed Article 21 from a relatively narrow due process provision into the constitutional foundation for a comprehensive right to dignified human existence.

The relevance of this interpretive expansion for Bangladesh is significant. The Bangladesh Constitution's Article 32, which provides that no person shall be deprived of life or personal liberty save in accordance with law, is the counterpart of India's Article 21. The Bangladesh Supreme Court has drawn on the Indian jurisprudence in interpreting Article 32, but has not developed an equivalently expansive body of doctrine. The question of whether Article 32 can bear the same expansive interpretation that the Indian court has given to Article 21 is one of the most important constitutional questions facing the Bangladesh Supreme Court in the current reform period.

The Indian Supreme Court's doctrine of constitutional morality, recently developed in decisions including Navtej Singh Johar (2018) which decriminalized consensual adult same-sex relations, provides a philosophically sophisticated framework for constitutional interpretation that prioritizes the constitutional values of equality and dignity over popular morality. Constitutional morality, in the sense of the moral principles embedded in the constitution itself, takes precedence over social morality, in the sense of the moral views prevalent in society at a given time. This framework has significant implications for the interpretation of Bangladesh's equality and dignity provisions in relation to socially marginalized groups including LGBTQ+ persons, religious minorities, and indigenous peoples.

CONCLUDING REFLECTIONS TO PART TWO

The examination conducted in this second part of the textbook has traced the philosophical foundations of fundamental rights through the major jurisprudential traditions, examined the specific provisions of Part III of the Bangladesh Constitution in comprehensive detail, investigated the systematic mechanisms through which those provisions have been hollowed out in practice, and evaluated the reform proposals against the demanding benchmark of a genuinely rights-protective constitutional order.

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Several overarching conclusions emerge from this examination.

First, the fundamental rights framework of the Bangladesh Constitution has been, throughout most of the country's constitutional history, more promise than reality. The gap between constitutional text and lived experience of rights protection is not accidental but reflects structural features of the political system, the legal culture, and the institutional design of rights enforcement mechanisms that have consistently favored those in power over those whose rights have been violated.

Second, the reform proposals represent a genuine and significant advance in the constitutional framework for fundamental rights, particularly in the proposal for a unified enforceable Bill of Rights, the addition of new rights for the digital age, the strengthening of emergency powers limitations, and the expansion of women's political representation. If implemented in good faith and supported by the institutional development necessary for effective enforcement, these reforms could substantially improve the actual protection of constitutional rights in Bangladesh.

Third, the implementation of constitutional rights reforms is not a purely legal or institutional project but a political and cultural one. Constitutional rights provisions do not enforce themselves. They require a judicial system with the independence, capacity, and institutional culture to apply them rigorously even against the government of the day. They require a civil society with the knowledge, organization, and resources to invoke constitutional protections on behalf of those whose rights are violated. They require a political culture that treats constitutional violations not merely as legal problems but as moral failings that impose genuine political costs on those responsible. Building these conditions is the work of generations, not of a single constitutional reform process, however admirable in its ambitions.

Fourth, the philosophical depth of the rights framework matters as much as its specific provisions. A rights framework grounded in a coherent constitutional philosophy of human dignity, equal respect for all persons, and substantive rather than merely formal equality is more resilient to political pressure and more capable of principled development through judicial interpretation than one whose rights provisions are disconnected from any coherent philosophical foundation. The current reform process offers an opportunity to articulate explicitly the philosophical foundations of Bangladesh's rights framework in a way that has never been done before, and the constitutional community of Bangladesh, including judges, legal scholars, civil society advocates, and engaged citizens, must seize that opportunity.

Fifth, the international and comparative dimensions of fundamental rights law are not merely academic but urgently practical. Bangladesh's rights obligations under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention Against Torture provide legally binding standards that the constitutional reform process must be designed to meet. The comparative experience of constitutional rights systems in Germany, South Africa, India, Canada, and elsewhere provides practical models for institutional design, doctrinal development, and judicial methodology that Bangladesh's constitutional community should study seriously and adapt thoughtfully to Bangladesh's specific conditions.

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The rights of the people of Bangladesh, inscribed in the constitution of 1972 and renewed through the uprising of 2024, are not merely legal abstractions. They are the lived stakes of millions of people whose daily experience of freedom, dignity, equality, and security is shaped by the effectiveness or ineffectiveness of constitutional rights protection. The reform process now underway represents perhaps the most significant opportunity in Bangladesh's constitutional history to bridge the gap between constitutional promise and constitutional reality. Whether that opportunity is seized or squandered will depend on choices made not only by constitution-drafters and legislators but by the entire constitutional community, and ultimately by the people of Bangladesh themselves.

FURTHER READING AND KEY SOURCES FOR PART TWO

On the philosophical foundations of fundamental rights, students should consult Dworkin, Ronald, Taking Rights Seriously (1977) and Freedom's Law (1996); Rawls, John, A Theory of Justice (1971); Nussbaum, Martha, Creating Capabilities: The Human Development Approach (2011); Sen, Amartya, Development as Freedom (1999); and Alexy, Robert, A Theory of Constitutional Rights (2002).

On comparative constitutional rights law, students should consult Tushnet, Mark, Weak Courts, Strong Rights (2008); Sunstein, Cass, Designing Democracy: What Constitutions Do (2001); Gardbaum, Stephen, The New Commonwealth Model of Constitutionalism (2013); and Jackson, Vicki, Constitutional Engagement in a Transnational Era (2010). For the South African experience specifically, students should read Klare, Karl, Legal Culture and Transformative Constitutionalism (1998); Bilchitz, David, Poverty and Fundamental Rights (2007); and the decisions of the Constitutional Court in Government of South Africa v. Grootboom (2000) and Minister of Health v. Treatment Action Campaign (2002).

On freedom of expression and digital rights, students should consult Schauer, Frederick, Free Speech: A Philosophical Enquiry (1982); Balkin, Jack, Living Originalism (2011), particularly the chapters on digital freedom; and the UN Special Rapporteur on Freedom of Opinion and Expression's thematic reports on internet shutdowns (2016), encryption and anonymity (2015), and online content regulation (2018).

On women's rights and constitutional gender justice, students should consult MacKinnon, Catharine, Toward a Feminist Theory of the State (1989); Williams, Patricia, The Alchemy of Race and Rights (1991); Kapur, Ratna, Gender, Alterity and Human Rights (2018); and Hossain, Sara, Women's Rights in Bangladesh (various editions).

On indigenous rights and minority constitutional protections, students should consult Kymlicka, Will, Multicultural Citizenship (1995) and Politics in the Vernacular (2001); Anaya, James, Indigenous Peoples in International Law (2004); and the reports of the UN Special Rapporteur on the Rights of Indigenous Peoples relevant to Bangladesh, particularly the 2011 report on the situation in the Chittagong Hill Tracts.

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On Bangladesh's specific constitutional rights history and jurisprudence, students should consult Islam, Mahmudul, Constitutional Law of Bangladesh (latest edition); Hoque, Ridwanul, Judicial Activism in Bangladesh (2011); the publications of the Centre for Governance Studies in Dhaka, particularly the annual State of Governance reports; and the reports of the Constitutional Reform Commission published in 2025, available on the commission's official website and through ConstitutionNet.

On the latest developments in Bangladesh's constitutional reform process as of 2025 and 2026, students should consult the ConstitutionNet analysis by Muhammad Ekramul Haque and Sumit Bisarya, July Charter and Constitutional Reforms in Bangladesh (December 2025); the International IDEA Explainer on the February 2026 election and referendum; Sara Hossain, Bangladesh's Referendum and Reforms: The Need to Return to a Constitutional Process (ConstitutionNet, March 2026); and the text of the July National Charter 2025, which is available in English translation on the ConstitutionNet website.

End of Part Two

PART THREE

THE LEGISLATURE, EXECUTIVE POWER, AND THE ARCHITECTURE OF DEMOCRATIC ACCOUNTABILITY: A JURISPRUDENTIAL AND POLITICAL ANALYSIS OF PARLIAMENTARY GOVERNANCE, THE CONCENTRATION OF EXECUTIVE AUTHORITY, AND THE IMPERATIVE OF STRUCTURAL REFORM IN BANGLADESH

PREFACE TO PART THREE

If Part One established the philosophical and historical foundations of Bangladesh's constitutional order, and Part Two excavated the fundamental rights framework in all its jurisprudential complexity, Part Three descends into the structural heart of the constitutional system: the design and operation of the legislative branch, the relationship between Parliament and the executive, the constitutional provisions governing the Prime Minister's exercise of power, and the reform proposals that aim to dismantle what has been consistently and correctly identified as the single most dangerous structural defect in Bangladesh's constitutional architecture, the concentration of virtually unchecked power in the office of the Prime Minister.

This concentration of executive power in Bangladesh is not merely a political problem in the ordinary sense of that term. It is a constitutional pathology of the deepest kind, one that has transformed a parliamentary democracy founded on the principle of governmental accountability

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into what constitutional scholars have variously described as a prime ministerial dictatorship, an elective autocracy, and a constitutionally laundered form of authoritarianism. The legal instruments of this concentration, most notably Article 70's prohibition on floor crossing, the structure of parliamentary committees, the dominance of the executive in the appointment of constitutional bodies, and the effective subordination of the presidency to the will of the Prime Minister, are not accidents of political practice but deliberate features of a constitutional design that has never adequately resolved the tension between governmental stability and democratic accountability.

Understanding this constitutional pathology requires examining simultaneously the formal constitutional provisions of Part IV and Part V of the Bangladesh Constitution, the political and institutional dynamics that have operated within and upon those provisions over fifty years of constitutional practice, the theoretical literature on parliamentary government and its dysfunctions, and the reform proposals advanced by the Constitutional Reform Commission and the July Charter of 2025, which represent the most serious and comprehensive attempt in Bangladesh's constitutional history to rebalance the relationship between legislative and executive power.

The timing of this analysis could not be more significant. The February 2026 general election produced a government formed by the Bangladesh Nationalist Party with a two-thirds majority in Parliament, a supermajority that gives the BNP, under the mandate of the July Charter referendum, the constitutional capacity to implement the agreed reforms within the 180-day window of the Constitution Reform Council. At the same time, the BNP's refusal of the second oath as members of the Reform Council, and its insistence that reforms can be implemented through ordinary legislative channels without using the Reform Council mechanism, creates a constitutional uncertainty about how and whether the reform agenda will be implemented. The analysis in this Part is therefore not merely retrospective but urgently prospective, addressing the institutional choices that Bangladesh's new parliament must make in the coming months.

CHAPTER ONE: PARLIAMENTARY GOVERNMENT IN THEORY AND PRACTICE: THE PROMISE AND THE PERVERSION

1.1 The Philosophy and Logic of Parliamentary Government

Parliamentary government, as a constitutional form, rests on a philosophically distinctive understanding of the relationship between democratic legitimacy, governmental accountability, and effective governance. To understand why Bangladesh's parliamentary system has failed so catastrophically to deliver on the promises of democratic accountability, one must first understand what parliamentary government theoretically requires and why it was chosen as the constitutional form in 1972.

The fundamental principle of parliamentary government is the fusion of executive and legislative power through the mechanism of responsible government: the executive derives its authority from the legislature, depends on the legislature's continued confidence for its survival in office,

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and is accountable to the legislature for the exercise of its powers. This is the constitutional logic that Edmund Burke articulated when he described Parliament as a "deliberative assembly of one nation, with one interest," and that Walter Bagehot, writing in The English Constitution in 1867, identified as the "efficient secret" of the British constitution: the close union, the nearly complete fusion, of the executive and legislative powers.

The theoretical advantages of parliamentary government over presidential government are several and have been extensively analyzed in the comparative politics literature. First, parliamentary government provides for executive accountability through the mechanism of the vote of no confidence, which allows the legislature to remove a government that has lost the confidence of parliamentary representatives and therefore of the democratic mandate they embody. This accountability mechanism is missing from presidential systems, where the president is independently elected and can survive in office regardless of legislative disapproval, unless the extraordinary remedy of impeachment is invoked.

Second, parliamentary government provides for flexibility and adaptability in the formation of governments: when one government loses the confidence of Parliament, another can be formed without the disruption of a new national election, allowing the political system to adjust to changing political circumstances with greater agility than presidential systems that lock in a particular executive for a fixed term regardless of political developments.

Third, parliamentary government promotes the integration of executive and legislative functions in a way that can make governance more coherent and effective: because the government must maintain a parliamentary majority to survive, the legislative process and the executive policy process are closely interconnected in ways that can produce more coherent and internally consistent policy outcomes than the adversarial separation of executive and legislative power in presidential systems.

These theoretical advantages of parliamentary government are real and significant. They help explain why the majority of the world's established liberal democracies, particularly those with Westminster constitutional heritage including the United Kingdom, Canada, Australia, New Zealand, India, and initially Bangladesh, operate parliamentary rather than presidential systems. They also explain why Bangladesh's constitutional founders chose parliamentary government as the foundational form in 1972.

However, parliamentary government also carries structural vulnerabilities that the theoretical literature has identified and that Bangladesh's constitutional history has illustrated with painful clarity. The most fundamental vulnerability is that the fusion of executive and legislative power, which is the parliamentary system's greatest strength, can also become its greatest weakness. If the governing party controls both the executive and a reliable parliamentary majority, and if internal party discipline is enforced sufficiently strictly to prevent parliamentary dissent from the government's line, then the accountability mechanism at the heart of parliamentary government, the ability of the legislature to remove a government that has lost its confidence, becomes effectively inoperative.

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Juan Linz, the Spanish-American political scientist whose work on presidentialism and parliamentarism remains foundational in the comparative politics literature, identified the conditions under which parliamentary government works well and those under which it fails. Parliamentary government works well when parties maintain genuine internal democracy, when backbench MPs retain meaningful freedom to vote according to their constituents' interests and their own consciences, when parliamentary committees have genuine investigative capacity and independence from government control, and when the opposition retains sufficient procedural power to hold the government to account through debate, questioning, and scrutiny. When these conditions are absent, as they have been in Bangladesh throughout most of its constitutional history, parliamentary government degenerates from a system of accountable governance into a mechanism of executive dominance dressed in democratic clothing.

1.2 The Westminster Inheritance and Its South Asian Mutations

Bangladesh's parliamentary system is directly descended from the Westminster model of parliamentary government developed in Britain over centuries of constitutional evolution. But the Westminster model as transplanted to post-colonial South Asian contexts has undergone significant mutations that have transformed it in ways that undermine its essential accountability logic.

The original Westminster model, as it developed in Britain, operated within a specific set of political and constitutional conditions that are very different from the conditions of post-colonial South Asia. British parliamentary practice was sustained by a dense network of constitutional conventions, informal norms, and political cultures that constrained the exercise of executive power in ways that formal constitutional rules could not replicate. The concepts of ministerial responsibility, collective cabinet responsibility, the "Nolan principles" of public life, the independence of the civil service from political direction, the active and independent role of parliamentary committees, and the genuine expectation that government will respond to parliamentary questions with candor, all of these are constitutional conventions rather than formally enforceable legal rules. They depend for their effectiveness on the acceptance of those who exercise power that they are bound by these conventions even when they have the formal power to disregard them.

When the Westminster model was transplanted to India, Pakistan, and subsequently Bangladesh at the moment of independence, these accompanying constitutional conventions could not simply be transplanted along with the formal institutional structures. Constitutional conventions are products of long political evolution within specific political cultures, and they cannot be created overnight by constitutional fiat. The result was that the formal structures of Westminster parliamentary government were established in these new constitutional systems without the accompanying informal culture of accountability, restraint, and respect for parliamentary norms that gave the Westminster model its effectiveness in its country of origin.

Granville Austin, whose account of the making of the Indian Constitution remains one of the most important works in comparative constitutional history, observed that the Indian Constitutional Assembly consciously chose the Westminster model partly for its familiarity from the colonial period and partly out of the belief that strong central government was necessary for

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national integration in the newly independent country. The same considerations applied with even greater force to Bangladesh in 1972, where the new government faced the dual challenge of post-liberation reconstruction and the consolidation of national sovereignty in the face of internal political fragmentation and external threats.

The result in Bangladesh, as in India and Pakistan, was the establishment of formal parliamentary institutions without the substantive accountability culture that makes parliamentary government work. The Prime Minister's ability to dominate Parliament through the combination of a loyal majority and strict party discipline, the weakness of parliamentary committees, the subordination of the civil service to political direction, and the absence of genuine independence in institutions that should constrain executive power, all of these features of Bangladesh's parliamentary system represent the mutation of the Westminster inheritance from an accountability mechanism into an executive dominance mechanism.

Arend Lijphart's comparative work on democracies, particularly his influential typology distinguishing "majoritarian" and "consensus" models of democracy, provides a useful analytical framework for understanding this mutation. The Westminster model is the paradigm case of majoritarian democracy: it concentrates power in the hands of a single-party government supported by a simple parliamentary majority, relies on alternation in power rather than power-sharing to ensure democratic accountability, and makes governance efficient at the cost of inclusiveness. The consensus model, by contrast, disperses power among multiple institutions and actors, relies on coalition-building and negotiation, and sacrifices some efficiency for greater inclusiveness and broader representation.

Bangladesh's constitutional system has historically operated as a hyperconcentrated form of majoritarian democracy, in which the winner of a parliamentary majority has exercised power with very few effective institutional constraints. The July Charter's reform proposals, particularly the introduction of a bicameral legislature with a proportionally elected upper house, the reform of Article 70, the establishment of the National Constitutional Council, and the enhanced powers of the presidency, represent a partial but significant shift toward the consensus model, designed to disperse power more broadly and create more effective checks on executive dominance.

1.3 Comparative Parliamentary Models: Germany, India, Canada, and the Lessons for Bangladesh

The comparative constitutional literature on parliamentary government provides rich resources for evaluating Bangladesh's constitutional system and the reform proposals it is now considering. Several constitutional systems offer particularly instructive models, each designed to address specific vulnerabilities of parliamentary government while maintaining its essential democratic logic.

The German Basic Law of 1949 introduced what constitutional scholars call the "constructive vote of no confidence" as a mechanism for ensuring governmental stability while maintaining parliamentary accountability. Under Article 67 of the Basic Law, the Bundestag can only dismiss a Chancellor by simultaneously electing a successor with an absolute majority. This "constructive" requirement prevents the parliamentary majority from bringing down a

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government without being able to agree on an alternative, which was the principal cause of governmental instability in the Weimar Republic that preceded the Nazi seizure of power. The constructive no-confidence mechanism has proven highly effective in Germany, contributing to the country's remarkable governmental stability: in the more than seventy years since the Basic Law was adopted, the constructive vote of no confidence has been used successfully only once, in 1982.

Germany's Bundesrat, the upper house of the German federal legislature, provides a different model of bicameralism that is worth examining in the Bangladesh context. The Bundesrat represents the governments of the German federal states (Lander) rather than individual citizens, giving the federal states a direct voice in national legislation, particularly legislation that affects their interests and responsibilities. This form of "executive federalism" in the upper house is very different from the proportional representation model proposed for Bangladesh's Senate, but it illustrates the diverse ways in which upper houses can be designed to serve different constitutional purposes.

The Indian Constitution's experience with parliamentary government over more than seven decades provides particularly instructive lessons for Bangladesh, given the common Westminster heritage and the similarities in post-colonial constitutional challenges. India's parliamentary system has proven more resilient than Bangladesh's, partly because of the constitutional design of the Rajya Sabha, India's upper house, which provides a constitutionally entrenched check on the Lok Sabha and has on several occasions prevented or significantly modified legislation passed by a Lok Sabha dominated by a single party. The Rajya Sabha's composition, which reflects the results of state legislative assembly elections rather than national general elections, gives it a different political character from the Lok Sabha and means that a party with a commanding majority in the lower house may face significant opposition in the upper house, creating a genuine bicameral check on executive dominance.

Canada's Westminster-based parliamentary system has developed constitutional conventions and practices that have provided somewhat more robust checks on executive power than Bangladesh's equivalent. The principle of ministerial responsibility, under which individual ministers are accountable to Parliament for the conduct of their departments and can be compelled to resign for failures within their portfolios, has been more consistently enforced in Canada than in Bangladesh. Parliamentary committees in Canada have developed genuine investigative capacity and independence, conducting inquiries into governmental conduct with a rigor that Bangladesh's parliamentary committees have rarely matched. The Access to Information Act and the role of independent Officers of Parliament, including the Parliamentary Budget Officer and the Commissioner of Official Languages, provide institutional accountability mechanisms that have no equivalent in Bangladesh.

The lesson of these comparative examples is not that Bangladesh should simply import any particular constitutional model but that there are multiple feasible institutional designs that can provide better checks on executive power within a parliamentary framework than the design that Bangladesh has operated under since 1972. The reform proposals in the July Charter draw on elements of several of these models, and the task for Bangladesh's constitution-drafters is to

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adapt these elements intelligently to Bangladesh's specific political, social, and institutional conditions.

CHAPTER TWO: THE JATIYA SANGSAD: STRUCTURE, FUNCTION, AND CONSTITUTIONAL DESIGN

2.1 The Constitutional Framework of the National Parliament

The Jatiya Sangsad, Bangladesh's national Parliament, is established by Article 65 of the Constitution, which provides for a single chamber of 350 members, of whom 300 are directly elected from single-member territorial constituencies and 50 are reserved seats for women allocated among the political parties represented in Parliament in proportion to their share of elected seats. The Speaker, elected by and from among the members, presides over parliamentary sessions and manages the conduct of parliamentary business.

The constitutional provisions governing the Jatiya Sangsad are contained primarily in Part VI of the Constitution, comprising Articles 65 through 93. These provisions establish the basic structure of parliamentary government: the composition of Parliament, the qualifications and disqualifications for membership, the procedures for elections and by-elections, the conduct of parliamentary sessions, the legislative process, the financial procedures including the budget process, and the powers and responsibilities of the Speaker and Deputy Speaker.

The constitutional design of the Jatiya Sangsad reflects the Westminster model of parliamentary government in its basic structure, but with important modifications that have proven deeply problematic in operation. The most significant of these modifications is Article 70, which will be examined in detail later in this chapter. But there are other constitutional features that have contributed to the weakness of parliamentary accountability in Bangladesh: the allocation of reserved seats for women in a manner that makes them dependent on party leadership rather than directly accountable to constituencies; the concentration of procedural authority in the Speaker, who has historically been a loyal partisan of the governing party rather than an impartial presiding officer; the weakness of the committee system relative to the Westminster model; and the constitutional absence of guaranteed opposition rights and speaking time.

The physical setting of the Jatiya Sangsad is worth noting, because the design of parliamentary spaces can reflect and reinforce constitutional culture in important ways. Louis Kahn's celebrated Sangsad Bhaban, the Parliament building completed in 1983 and widely regarded as one of the masterpieces of twentieth-century architecture, creates a physical environment of extraordinary beauty and symbolic weight. The building's massive concrete forms, its integration of natural light through geometric apertures, and its commanding presence in the Dhaka cityscape all suggest a parliament of great constitutional dignity. The irony that this magnificent architectural monument to parliamentary democracy has housed a legislature that has so consistently failed to exercise meaningful democratic accountability is one of the recurring paradoxes of Bangladesh's constitutional experience.

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2.2 The Electoral System and Parliamentary Representation: First Past the Post and Its Consequences

Bangladesh's single-member constituency electoral system, known as first-past-the-post (FPTP), has profound consequences for the relationship between parliamentary representation and democratic legitimacy. Under FPTP, the candidate with the most votes in each constituency wins, regardless of whether they have secured a majority. This simple plurality rule has several well-documented effects on the character of parliamentary representation that are directly relevant to the constitutional problems of executive dominance.

The most significant effect of FPTP in Bangladesh's specific political context is the production of massive parliamentary majorities that bear little relationship to the actual distribution of political support among the electorate. When two major parties compete in a close election, FPTP tends to translate a modest majority of votes into an overwhelming majority of seats. When one party dominates an election, as the Awami League did in the 2008 and 2014 elections, the seat bonus can be enormous: the Awami League won more than 80 percent of parliamentary seats in 2008 with approximately 49 percent of the vote, and effectively swept the 2014 election that most opposition parties boycotted.

These manufactured supermajorities are deeply problematic from a constitutional accountability perspective. They give the governing party a parliamentary dominance that makes meaningful legislative oversight of executive action virtually impossible. They make the government's survival independent of any individual parliamentarian's vote, which reduces the practical leverage that backbench MPs would otherwise have over the executive. They make constitutional amendments procedurally easy even when they are democratically illegitimate. And they create the conditions in which a constitutionally elected government can, as the Awami League did after 2008, systematically dismantle institutional checks on its power while maintaining the formal appearances of democratic legitimacy.

The debate about electoral reform in Bangladesh has focused primarily on the alternative of proportional representation, which would allocate parliamentary seats in proportion to each party's share of the national vote and would therefore produce more accurate representation of the electorate's political preferences. Proponents of PR argue that it would reduce the manufactured supermajorities that have enabled executive dominance, increase the diversity of parliamentary representation, and create incentives for coalition government that would require greater negotiation and compromise than the winner-take-all outcomes of FPTP.

Opponents of PR in Bangladesh have focused on the potential for governmental instability: coalition governments formed through post-election bargaining may be less stable and less decisive than majority governments, and the experience of many parliamentary systems with high-fragmentation party systems and frequent coalition collapse suggests that this concern is not unfounded. The Italian First Republic's chronic governmental instability under a pure PR system, and Israel's difficulty in forming stable governments under its highly proportional electoral system, are frequently cited as cautionary examples.

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The reform proposals in the July Charter adopted a compromise approach: retaining FPTP for the lower house while using PR for the upper house. This combination attempts to preserve the governmental stability associated with FPTP while ensuring that at least one chamber of the legislature provides proportional representation of political forces. The constitutional logic is that the upper house, elected by PR, will provide a counterweight to the manufactured majorities of the lower house, particularly in relation to constitutional amendments that require upper house approval.

The question of whether this compromise is well-calibrated is one of the central institutional design questions of the current reform process. The effectiveness of the upper house as a check on executive dominance will depend critically on the details of its powers, its relationship with the lower house, and the political dynamics that emerge when a PR-elected upper house confronts a FPTP-elected lower house in which the governing party holds a large majority. These questions are examined in detail in the following sections.

2.3 Women's Representation in Parliament: The Reserved Seats Controversy and the Path to Direct Election

The constitutional provision for 50 reserved seats for women, established in Article 65(3), represents one of the most contested dimensions of parliamentary composition in Bangladesh's constitutional history. The reserved seat system was introduced in the original 1972 constitution as a temporary measure to ensure women's representation in the new Parliament at a time when societal conditions made it unlikely that women would win many seats in open constituency elections. The original provision was for a ten-year period, after which it was expected that women's political representation would be mainstreamed through direct constituency competition. In practice, the reserved seats have been extended repeatedly by successive governments, and have become a permanent feature of the parliamentary landscape.

The design of the reserved seat mechanism has been the subject of legitimate constitutional criticism. Under the existing system, reserved seats are allocated among the parties represented in Parliament in proportion to their share of directly elected seats. This means that women in reserved seats are nominees of party leaders rather than directly elected representatives of constituencies. They owe their parliamentary position to party patronage rather than to the direct electoral support of voters, which significantly limits their political independence and their incentive and capacity to represent their constituents' interests rather than their party leaders' preferences.

This structural defect in the reserved seat mechanism has been recognized by feminist constitutional scholars who have argued that nominal representation without genuine political independence is insufficient to address the substantive underrepresentation of women in political life. A woman MP who can retain her seat only so long as she maintains the confidence of party leadership, and who has no direct constituency of voters to whom she is accountable, lacks the institutional position from which to exercise meaningful political agency.

The Constitutional Reform Commission's proposal to replace the reserved seat mechanism with 100 directly elected women's seats in a lower house expanded to 400 members represents a

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significant improvement in the constitutional framework for women's political representation. Under the proposed system, women would compete in directly elected constituencies and would therefore be accountable to voters in the same way as male MPs. The establishment of constituencies designed specifically for women's direct election raises complex implementation questions, including how these constituencies are to be defined, whether they are single-member or multi-member, and how they relate geographically and institutionally to the existing constituency framework.

The comparative experience of countries that have introduced quotas for women's direct election is instructive. Rwanda, which introduced a constitutional requirement that at least 30 percent of parliamentary seats be held by women in its 2003 Constitution, has achieved the highest female parliamentary representation of any country in the world, with women holding more than 60 percent of seats in its lower house. The direct election mechanism, combined with reserved constituency seats, has proven effective in increasing women's representation while maintaining the accountability relationship between MPs and voters. However, Rwanda's system operates in a specific political context that is very different from Bangladesh's, and the direct applicability of its approach requires careful consideration.

South Africa's experience under the African National Congress's voluntary party quota system, which requires that 50 percent of party candidates on proportional representation lists be women, has also achieved high levels of female parliamentary representation without constitutional quotas, demonstrating that voluntary party commitments can be effective when party leadership is genuinely committed to gender equality. This experience suggests that the constitutional framework for women's representation should be accompanied by political party reforms that create incentives and requirements for internal party democracy that include gender equality.

CHAPTER THREE: ARTICLE 70 AND THE CONSTITUTIONALIZATION OF LEGISLATIVE SERVILITY

3.1 The Origins, Text, and Constitutional Logic of Article 70

Article 70 of the Bangladesh Constitution is, without question, the single most damaging provision in the document's institutional design, and its reform or abolition represents the most consequential of the structural changes proposed in the current reform agenda. The article provides that a member of Parliament elected as a candidate of a political party shall vacate their seat if they resign from, or vote in Parliament against the party, or abstain from voting in Parliament contrary to the party's direction. The provision is supplemented by the Fourth Amendment's additions, which also mandate vacation of seat if a member is present in Parliament but does not take part in voting, or if a member fails to attend Parliament against the direction of the party.

The combined effect of these provisions is to create the most restrictive anti-defection law of any parliamentary democracy in the world. Under Article 70, an MP who votes against their party on any matter, including a matter of fundamental principle or constitutional importance,

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automatically loses their parliamentary seat. There are no exceptions, no procedures for waiver, and no judicial review of the party's determination that a member has violated the provision. The member is simply expelled from Parliament.

The historical context of Article 70's adoption illuminates the political calculations that produced it. The article was included in the 1972 Constitution at the insistence of Sheikh Mujibur Rahman, who had observed the instability of parliamentary politics in pre-independence Pakistan and was determined to ensure that his government would not be threatened by individual MPs crossing the floor. The immediate trigger, as noted in the Wikipedia article on Article 70, was the incident in which K.M. Obaidur Rahman, an MP from the Awami League, raised questions in the Constituent Assembly about legislative powers, which was seen by Mujib as an act of political insubordination.

This origin story is deeply revealing about the constitutional philosophy that produced Article 70. The provision was conceived not as a measure to protect the integrity of the parliamentary process or to prevent corruption in the form of floor crossing induced by bribery, but as a tool to ensure the personal loyalty of parliamentary members to the party leader. It was, in other words, an instrument of political control dressed in constitutional clothing. That this instrument of control came to be used by successive governments to maintain parliamentary rubber-stamp majorities and insulate executive power from meaningful legislative scrutiny is entirely consistent with its origins.

3.2 The Constitutional Case Against Article 70

The constitutional arguments against Article 70 are compelling and have been developed by legal scholars, political scientists, and constitutional practitioners across several decades of critical engagement with the provision. These arguments operate at multiple levels: the textual and structural, the rights-based, the comparative, and the functional or consequentialist.

At the textual and structural level, Article 70 conflicts with multiple other constitutional provisions. Article 7 declares that all powers belong to the people and that the constitution is the supreme law. Article 11 guarantees democracy and the fundamental human rights of the citizens and ensures the accountability of the executive to Parliament. Article 39 guarantees freedom of conscience, thought, and expression. And Article 77 contemplates that the legislature will function as a genuine deliberative body capable of holding the executive accountable. Article 70 is irreconcilable with all of these provisions, because it prevents MPs from exercising the independence of judgment and freedom of conscience that genuine deliberative accountability requires. An MP who knows that voting according to their conscience will cost them their parliamentary seat cannot genuinely exercise the deliberative functions that Parliament is constitutionally required to perform.

The rights-based argument against Article 70 focuses on its incompatibility with the fundamental rights of both MPs and their constituents. MPs are citizens with constitutionally protected freedoms of conscience, expression, and association, and Article 70 violates all three by effectively compelling conformity with party positions on pain of losing one's elected position. The constituents who elect MPs on the basis of those MPs' pledges and records are denied

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genuine representation when the MPs they elect are constitutionally required to vote on the party leader's direction rather than on the basis of independent judgment. This violation of both the representative and the deliberative dimensions of parliamentary democracy has been identified by the Supreme Court in obiter remarks but has never been confronted directly in a definitive constitutional judgment.

The comparative argument is devastating. Among the world's established parliamentary democracies, Bangladesh is virtually unique in imposing such comprehensive restrictions on parliamentary free voting. The United Kingdom, the Westminster parliamentary democracy from which Bangladesh's model descends, has no anti-defection law whatsoever. MPs vote against the government with considerable frequency, the cabinet operates through genuine collective responsibility rather than enforced unanimity, and the governing party's survival depends on maintaining the genuine confidence of a parliamentary majority that has real freedom to withdraw its support. Germany's Bundestag has no anti-defection law. Canada's Parliament has no anti-defection law. Australia's Parliament has no anti-defection law.

Even those Commonwealth countries that do have anti-defection laws have designed them far more narrowly than Bangladesh's Article 70. India's Tenth Schedule, which was added to the Constitution in 1985 to address the specific problem of politically induced floor crossing through bribery and corruption, applies only when a member votes against the party on a motion of confidence or a money bill, not on ordinary legislation. Pakistan's anti-defection provisions similarly apply only to a narrower range of votes. Bangladesh's Article 70 is exceptional in its comprehensiveness and in the absence of any exceptions for votes of conscience or for ordinary legislation that does not threaten governmental survival.

The functional argument against Article 70 examines its consequences for the actual operation of Bangladesh's parliamentary system. The consequences have been consistently and uniformly negative from the perspective of democratic accountability. Parliamentary committees, which should be the primary instrument of legislative oversight of executive action, have been systematically enfeebled by the fact that government MPs on these committees are constitutionally required to follow party positions rather than exercise independent investigative judgment. Parliamentary debates have been reduced to orchestrated performances in which government MPs defend whatever the executive has decided and opposition MPs attack it, with the outcome predetermined by the arithmetic of parliamentary seats. The government has never faced a genuine threat of defeat on the floor of Parliament in any of the Parliaments dominated by a single party, which means that the fundamental mechanism of parliamentary accountability, the government's dependence on maintaining parliamentary confidence, has been effectively inoperative.

The consequence of this comprehensive legislative servility has been the transformation of the Prime Minister from an accountable parliamentary executive into, in effect, an elected monarch with a constitutionally guaranteed five-year term. The Prime Minister, secure in the knowledge that their parliamentary majority cannot vote against them regardless of what they do, has operated without meaningful parliamentary constraint. The phrase "prime ministerial dictatorship" that has been applied to the Bangladeshi executive by multiple scholars is not hyperbole but constitutional description.

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3.3 The Reform Proposals: Partial Reform versus Full Abolition

The July Charter's proposal to abolish Article 70 in its current form while retaining anti-defection provisions only for money bills and confidence votes represents the most significant proposed institutional reform in the current package. If implemented, this reform would fundamentally transform the character of Bangladesh's parliamentary system by restoring to MPs the freedom of independent judgment that Article 70 has systematically denied them for fifty years.

The political parties' positions on Article 70 reform reveal the internal tensions of the current reform process. The BNP, the NCP, and Jamaat-e-Islami have all expressed support for reforming Article 70 to allow free voting on most issues while retaining party discipline on money bills and confidence votes. This position reflects a principled constitutional approach that balances governmental stability, the concern that motivated the original Article 70, with parliamentary freedom, the value that Article 70 has catastrophically suppressed.

However, constitutional scholars have raised important questions about whether even the reformed version of Article 70 goes far enough. Retaining the prohibition on voting against the party on confidence votes means that the government's survival remains insulated from the independent judgment of MPs, even in cases where a significant number of government MPs have concluded that the government's conduct has forfeited its claim to their confidence. This qualification may be constitutionally defensible as a concession to governmental stability, but it should be recognized as a real limitation on parliamentary accountability that may, in practice, allow a determined executive to continue in office despite having lost the genuine confidence of a significant proportion of its own parliamentary supporters.

The retention of the prohibition on voting against the party on money bills raises additional concerns. Money bills include not only the annual budget but also supplementary estimates, taxation legislation, and other financial matters that are fundamental to governmental policy. Requiring MPs to vote on party lines on all financial legislation means that the government retains an important domain of policy-making in which parliamentary accountability is constitutionally suppressed. Given that financial management, including the allocation of public resources, the design of the taxation system, and the direction of public investment, is among the most important functions of government and among those most susceptible to corruption and mismanagement, the constitutional immunity of financial legislation from free parliamentary voting is a significant limitation on the reform's ambitions.

The most radical position, advocated by some constitutional scholars and civil society voices, is the complete abolition of Article 70 without any replacement anti-defection provisions. The argument for complete abolition is that the concern about political floor crossing induced by bribery or personal inducement can be addressed through criminal law and financial disclosure requirements, without needing a constitutional provision that systematically suppresses parliamentary free speech. The experience of established parliamentary democracies without anti-defection laws demonstrates that parliamentary stability can be maintained through political culture and party discipline without requiring constitutional compulsion.

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This more radical position deserves serious engagement. The cases for some retention of anti-defection provisions are not without merit: in a political system where patronage, corruption, and personal inducement remain significant factors in political life, the complete absence of any legal protection against the deliberate orchestration of political defections for corrupt purposes poses genuine governance risks. But the risk of corrupt floor crossing can be addressed by more targeted legal instruments, such as criminal prohibitions on bribery of MPs, without requiring the constitutional suppression of independent parliamentary judgment on all legislative matters.

CHAPTER FOUR: THE PRIME MINISTER AND EXECUTIVE DOMINANCE: CONSTITUTIONAL PROVISIONS AND POLITICAL REALITY

4.1 The Constitutional Position of the Prime Minister

The Prime Minister's constitutional position in the Bangladesh Constitution is established by Articles 55 through 58, which provide that the executive power of the Republic is exercised by or on the authority of the Prime Minister, that the cabinet collectively responsible to Parliament, that the Prime Minister is appointed by the President from among members of Parliament, and that the President acts in accordance with the advice of the Prime Minister except in a small number of constitutionally specified matters.

These provisions, which are the formal constitutional text of executive power in Bangladesh, present a picture of parliamentary government in which the Prime Minister is accountable to Parliament and in which the President, as head of state, retains a degree of constitutional independence as a check on the exercise of executive power. The reality of how these provisions have operated in practice is dramatically at odds with this picture.

The Prime Minister's practical dominance over the constitutional system is not solely a product of Article 70, though Article 70 is its most important constitutional enabler. It is also a product of the control that the Prime Minister exercises, directly or indirectly, over the appointment of key constitutional officeholders. Under the existing constitutional framework, the appointments of the Chief Justice and other Supreme Court judges, the members of the Election Commission, the heads of the Anti-Corruption Commission, the Public Service Commission, and various other constitutional bodies all flow through processes in which the Prime Minister's influence is decisive. When the person who controls the executive also effectively controls the appointment of those whose function is to constrain the executive, the constitutional separation of powers becomes nominal rather than real.

The President's constitutional position illustrates this dynamic with particular clarity. Articles 48 and 55 of the Constitution establish that the President acts on the advice of the Prime Minister, with the sole exception of the appointment of the Prime Minister and the Chief Justice. In practice, this means that the President's role as head of state is almost entirely ceremonial, with the substantive exercise of executive power concentrated entirely in the Prime Minister. The President's ability to exercise independent constitutional judgment is constitutionally limited to a

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very narrow range of situations, none of which provide an effective check against the systematic exercise of executive dominance by a Prime Minister with a large parliamentary majority.

The constitutional comparison with other parliamentary systems is illuminating. In the German parliamentary system, the Federal President plays a genuinely independent constitutional role, including the power to refer legislation to the Federal Constitutional Court, to refuse to sign legislation that the President believes to be unconstitutional, and to play an active role in the formation of governments in circumstances where no parliamentary majority is clear. In Finland's parliamentary system, the President retains significant constitutional powers in foreign affairs and national security that provide genuine executive independence from the Prime Minister. Even in the British system, from which Bangladesh's derives, the constitutional conventions governing the exercise of the royal prerogative provide more effective constraints on executive action than Bangladesh's formal constitutional provisions provide on the Prime Minister.

4.2 The Prime Minister and Parliament: Formal Accountability and Real Dominance

The formal mechanisms of parliamentary accountability to which the Prime Minister is subject include the Question Hour, in which MPs can question ministers about the conduct of their departments; parliamentary debates on government legislation and on motions of no confidence; the work of parliamentary committees with oversight responsibilities; and the budget process, in which the government's financial proposals are subject to parliamentary scrutiny and approval.

Each of these formal accountability mechanisms has been systematically enfeebled by the combination of Article 70 and the broader culture of executive dominance that has characterized Bangladesh's parliamentary practice. The Question Hour, in constitutional theory a powerful instrument of parliamentary accountability, has in practice become a ritual in which government MPs ask friendly questions designed to showcase the government's achievements and opposition MPs use the procedure primarily for political point-scoring rather than genuine inquiry. The quality of parliamentary questions, the standards of ministerial response, and the follow-up scrutiny that the information obtained through questions receives are all substantially below the standards that prevail in more robustly accountable parliamentary systems.

Parliamentary debates on government legislation are affected by Article 70 in a direct and devastating way: because government MPs cannot vote against legislation regardless of their views, the outcome of any legislative debate is predetermined by the arithmetic of parliamentary seats, and the deliberative dimension of the parliamentary process is reduced to performance rather than substantive deliberation. Opposition MPs can delay and criticize legislation through parliamentary procedures, but they cannot defeat it so long as the government maintains its majority, which under Article 70 it is guaranteed to maintain on any vote that the party treats as a party question.

Parliamentary committees are constitutionally provided for in Article 76 and in the Rules of Procedure of Parliament, and their investigative capacity is, in principle, substantial. However, the composition of parliamentary committees reflects the partisan character of Parliament as a whole, with government MPs constituting a majority on virtually all committees and the

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committee chairs occupied by government supporters. The practice of parliamentary committee oversight of executive departments has been substantially weaker in Bangladesh than in comparable parliamentary democracies, partly because of Article 70's constraints and partly because of a political culture in which parliamentary committees are not expected to conduct genuinely adversarial scrutiny of the executive.

The Public Accounts Committee, which is constitutionally the primary instrument of financial oversight of executive spending, has occasionally produced genuinely important accountability findings, particularly in relation to the Comptroller and Auditor General's reports on government expenditure. But the committee's findings have rarely resulted in meaningful accountability: the government's control of Parliament through Article 70 has meant that unfavorable committee reports can be politically managed without institutional consequences.

4.3 The Fifteenth Amendment and the Institutionalization of Executive Supremacy

The Fifteenth Amendment to the Bangladesh Constitution, enacted in 2011 under the government of Sheikh Hasina, represents the most systematic attempt in Bangladesh's constitutional history to institutionalize executive supremacy through constitutional means. The amendment made a series of changes that, considered individually, might each be defended as constitutionally reasonable but that collectively amounted to the elimination of the most significant institutional checks on the Prime Minister's power.

The most consequential change effected by the Fifteenth Amendment was the abolition of the Non-Party Caretaker Government system, which had been introduced by the Thirteenth Amendment of 1996 and which had provided for the transfer of power to a neutral caretaker government during the period between the dissolution of Parliament and the conduct of elections. The caretaker system had been introduced precisely because of the widely recognized problem of incumbent governments using state resources and the machinery of government to influence election outcomes, a problem that had distorted every election conducted under a partisan government. The Supreme Court's 2011 decision in the Eighth Amendment case had upheld the constitutional validity of the caretaker system while simultaneously suggesting, in obiter remarks, that it might be constitutionally inappropriate for the judges of the Appellate Division to serve as caretaker advisers, providing the constitutional cover for the Fifteenth Amendment's abolition of the entire system.

The abolition of the caretaker system, combined with the retention of Article 70's prohibition on parliamentary dissent, meant that after 2011 the incumbent government controlled both the machinery of elections and the parliamentary chamber that should provide oversight of executive conduct. The 2014 and 2018 elections, conducted under partisan governments in the absence of the caretaker mechanism, were widely criticized as seriously flawed, with substantial evidence of interference with the electoral process by government-aligned forces. The 2018 election in particular, in which the Awami League claimed to have won 96 percent of parliamentary seats in a competitive multiparty election, produced results that defied credibility and were rejected by most international election observers as reflecting genuine voter preferences.

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The Fifteenth Amendment also removed the constitutional prohibition on religious-based politics that had been part of the secular character of the original 1972 Constitution, a change that had significant implications for the political landscape but is beyond the scope of this chapter's focus on executive dominance. More directly relevant was the amendment's introduction of Articles 7A and 7B, which purported to prohibit any person from abrogating, repealing, or suspending the constitution by unconstitutional means, and which imposed severe criminal penalties including death for any such attempt. The irony of these provisions, which were introduced by a government that was itself engaged in a systematic process of constitutional subversion through legitimate legislative means, was not lost on constitutional observers at the time of their enactment.

CHAPTER FIVE: THE PROPOSED BICAMERAL LEGISLATURE: DESIGN, FUNCTION, AND CONSTITUTIONAL PHILOSOPHY

5.1 The Case for Bicameralism in Bangladesh's Constitutional Context

The proposal to introduce a bicameral legislature, transforming Bangladesh's unicameral Jatiya Sangsad into a two-chamber system composed of a lower house (the Jatiya Sangsad or National Assembly) and a proposed Senate, is the most structurally significant institutional reform in the July Charter. It responds directly to the most fundamental constitutional problem of executive dominance by creating a second chamber with the constitutional authority to constrain legislation passed by the lower house and to participate in constitutional amendments.

The case for bicameralism in Bangladesh's specific constitutional context rests on several distinct but mutually reinforcing arguments. The first and most immediately compelling argument is the check on majoritarian excess: a lower house elected by FPTP in Bangladesh's political system tends to produce manufactured supermajorities that give a single party constitutionally unchecked power to legislate, amend the constitution, and reshape the institutional landscape in its own interests. A proportionally elected upper house with the power to delay or block legislation provides an institutional counterweight that forces the governing majority to seek broader political support for major policy and constitutional changes.

The second argument is representational: proportional representation in the upper house would ensure that political forces whose support is geographically dispersed but numerically significant would be represented in the constitutional process. Bangladesh's political landscape includes significant forces, both ideological and sectoral, that regularly win substantial vote shares but few parliamentary seats under the FPTP system. A PR-elected upper house would give these forces genuine constitutional representation and would create incentives for cross-party negotiation on major legislation.

The third argument is deliberative: a second chamber provides an additional stage of constitutional scrutiny for legislation, particularly important for legislation that is politically urgent or ideologically charged and that may therefore receive insufficient deliberative attention in the lower house before being passed on party-line votes. The British House of Lords, despite

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its democratic deficiencies, has historically performed a genuine deliberative function in relation to government legislation, using its legislative delay power to force reconsideration of bills that independent assessment has found to be constitutionally or legally problematic.

The fourth argument is constitutional stability: requiring constitutional amendments to pass not only the lower house but also the upper house with majority support means that constitutional change requires broader political consensus than has historically been the case in Bangladesh. The Bangladesh Constitution's repeated mutation through amendments passed by bare parliamentary majorities has been one of the most destructive features of its constitutional history, and a bicameral constraint on constitutional amendment would provide an important protection against future amendment by partisan majorities.

Against these arguments for bicameralism, several objections have been raised that deserve serious engagement. The first is that bicameralism creates legislative complexity and potential gridlock, particularly when the two chambers have different political compositions and when the mechanisms for resolving inter-chamber disagreements are inadequately designed. The experience of the United States, where the structural tension between the Senate and the House of Representatives has frequently produced legislative deadlock on important policy issues, is often cited as a cautionary example.

The second objection is that the specific design of the proposed Bangladeshi Senate, with seats allocated in proportion to political parties' shares of the national vote in the lower house elections, means that the Senate will in most cases simply mirror the political composition of the lower house, since the allocation of PR seats is based on the same election results that produce the FPTP lower house composition. If the BNP wins 60 percent of lower house seats with 45 percent of the vote, it will also receive approximately 45 percent of upper house seats under the PR formula. The upper house may therefore be less of a check on executive dominance than proponents claim, because the governing party will typically maintain a significant presence in both chambers.

The third objection relates to democratic accountability: a PR-elected upper house is not directly elected by constituencies in the same way as lower house MPs, which may create concerns about the democratic legitimacy of an upper house that has the power to constrain legislation passed by directly elected representatives.

5.2 Constitutional Design of the Proposed Senate: Powers, Composition, and Procedures

The specific design of the proposed Bangladeshi Senate, as outlined in the Constitutional Reform Commission's recommendations and partially reflected in the July Charter, raises important institutional design questions that will significantly determine whether the Senate functions as an effective constitutional check or as a largely decorative addition to the parliamentary framework.

The proposed Senate would consist of 100 members elected through proportional representation based on the results of the lower house election, plus five members nominated by the President. The PR allocation would be based on parties' shares of the national vote in the lower house

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election, calculated after excluding parties that receive less than a threshold percentage of the vote, typically proposed at around three to five percent.

The powers of the proposed Senate are the most critical design question and the one on which the least detailed consensus has been reached in the reform process. The July Charter specifies that constitutional amendments will require approval by a majority of the upper house, which is the most important constitutional function of the proposed Senate. This requirement directly addresses the problem of constitutional amendment by partisan lower house majorities and represents the most significant constitutional check that the Senate will exercise.

Beyond constitutional amendments, the Senate's legislative powers have been more contested. The Constitutional Reform Commission's proposals suggested that the Senate would have the power to delay legislation from the lower house for a specified period, similar to the revising function of the British House of Lords, but would not have the power to indefinitely block or veto ordinary legislation that the lower house passes. The specific delay period proposed, up to two months, after which legislation would be deemed approved if the Senate has not acted, is a constitutionally modest check that preserves the primacy of the elected lower house while providing an additional stage of deliberative scrutiny.

The Senate's proposed power to participate in the approval of major international treaties related to national security is constitutionally significant. The approval of international treaties has historically been entirely within the executive's power in Bangladesh, subject only to parliamentary ratification through normal legislative procedures. Requiring Senate approval for national security treaties would create a more deliberative process for the most consequential international commitments, consistent with the approach of many other parliamentary systems where treaty ratification requires a constitutional supermajority or specific legislative chamber approval.

The question of whether the Senate should have the power to initiate legislation or only to review legislation initiated in the lower house is an important design question that has not been definitively resolved in the reform proposals. Most bicameral systems restrict the right to initiate money bills to the lower house, a practice that reflects the democratic principle that taxation and spending decisions should be primarily the responsibility of the directly elected house. Extending this restriction to all legislation would significantly limit the Senate's constitutional function, while allowing the Senate to initiate legislation in all domains would create potential conflicts with the lower house that could be difficult to resolve.

The National Consensus Commission's negotiations on the upper house revealed important disagreements between the BNP and other parties on the question of composition. The BNP argued that upper house seats should be allocated in proportion to parties' shares of lower house seats rather than in proportion to their shares of the national vote, which would mean that a party with a large FPTP seat bonus would also dominate the upper house, significantly reducing the PR system's countervailing effect. The NCP and Jamaat-e-Islami argued for genuine PR based on national vote shares, which would produce a more diverse upper house and a stronger counterweight to lower house majorities.

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This disagreement reflects a fundamental tension in the reform process about the degree to which the new constitutional framework is genuinely designed to constrain executive dominance or merely to create the appearance of institutional balance while preserving the governing party's dominance across both chambers. If the BNP's preferred formula for upper house composition is adopted, the Senate will provide far less of a check on executive dominance than the reform proposals claim, and the constitutional innovation will be more symbolic than substantive.

5.3 The National Constitutional Council: A Novel Institutional Mechanism

The Constitutional Reform Commission's proposal for a National Constitutional Council is one of the most innovative elements of the reform package and one that has no direct precedent in Bangladesh's constitutional history. The NCC, as proposed, would be a constitutional body comprising the President, the Prime Minister, the Leader of the Opposition, the Speakers of both houses, the Deputy Speakers of both houses from the opposition, the Chief Justice, and an elected representative from other parties.

The NCC's proposed functions are primarily in the domain of constitutional appointments: it would be responsible for nominating or approving the heads of key constitutional institutions including the Election Commission, the Anti-Corruption Commission, the National Human Rights Commission, and other independent constitutional bodies. The purpose is to shift the power of appointment away from the exclusive control of the Prime Minister and toward a constitutional body that represents multiple political forces, thereby reducing the scope for the governing party to staff constitutional oversight bodies with partisan loyalists.

The NCC model draws on elements of similar institutional innovations in other constitutional systems. South Africa's Constitutional Court has developed a practice of judicial appointments through a transparent, merit-based process that involves the Judicial Service Commission, a broad body representing multiple constitutional stakeholders. Kenya's 2010 Constitution established a National Cohesion and Integration Commission and similar bodies through broadly representative appointment processes. The European model of constitutional court appointments through consensus between political branches, as practiced in Germany where Bundesrat and Bundestag each appoint half of the Federal Constitutional Court's judges, provides another comparative reference point.

The effectiveness of the NCC will depend critically on how it functions in practice rather than on its constitutional design. If the NCC's deliberations are genuinely consensus-oriented, if all members feel empowered to exercise independent judgment, and if there are robust mechanisms for resolving disagreements when consensus cannot be achieved, then it could significantly improve the quality and independence of constitutional appointments. If, on the other hand, the NCC becomes a site of partisan bargaining in which appointments are divided among parties as political spoils, its creation will not meaningfully improve the independence of constitutional institutions.

The BNP's dissent on the mechanism for selecting the Caretaker Government's Chief Adviser through the NCC reflects the general concern that any multiparty appointment mechanism can be manipulated by the party with the strongest negotiating position, which in most circumstances

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will be the governing party. The constitutional design of the NCC must therefore include clear procedural rules for its operation, including quorum requirements, voting rules, mechanisms for breaking deadlocks, and public transparency requirements that allow civil society and the public to hold NCC members accountable for their appointment decisions.

CHAPTER SIX: THE EXECUTIVE PRESIDENCY: CONSTITUTIONAL POWERS, REFORM PROPOSALS, AND COMPARATIVE MODELS

6.1 The President's Constitutional Role: Ceremonial Head or Constitutional Guardian?

The constitutional position of the President of Bangladesh has been one of the most contested and repeatedly changed elements of the country's constitutional design. The original 1972 Constitution established a parliamentary system in which the President was a ceremonial head of state with powers exercised on the advice of the Prime Minister, consistent with the Westminster model. The Fourth Amendment of 1975 transformed Bangladesh into a presidential system in which the President became the executive head of government, a change that was associated with the consolidation of Sheikh Mujibur Rahman's personal power. After Mujib's assassination in August 1975, the country went through a period of governmental instability before the military government of Ziaur Rahman and subsequently Hussain Muhammad Ershad used the presidential structure as the constitutional cover for military-backed executive governance. The Twelfth Amendment of 1991, enacted in the initial phase of democratization, restored the parliamentary system and reduced the presidency to its current ceremonial status.

The current constitutional position of the President is established by Articles 48 through 54, which provide that the President is the head of state, that their powers are exercised on the advice of the Prime Minister, and that the President's ceremonial functions include the summons and prorogation of parliamentary sessions, the appointment of the Prime Minister and Chief Justice, and the exercise of the power of pardon. The practical significance of these powers is minimal: the President appoints the Prime Minister who commands the confidence of Parliament (meaning in practice the leader of the parliamentary majority), and the appointment of the Chief Justice similarly flows through a process in which Prime Ministerial influence is decisive.

The reform proposals in the July Charter propose a significant, though not dramatic, enhancement of the President's constitutional powers, designed to create a more genuine separation between the head of state and the head of government. The specific proposals include giving the President independent appointment powers over certain constitutional bodies, including the heads of the National Human Rights Commission, the Information Commission, the Press Council, and the Law Commission, without requiring prior advice from the Prime Minister. The proposals also include the requirement that the President be elected by secret ballot with majority votes of both houses, rather than by simple parliamentary majority as at present, which would give the presidential election a broader democratic base.

The proposed enhancement of presidential powers is deliberately modest, stopping well short of transforming Bangladesh from a parliamentary to a semi-presidential system. The semi-

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presidential model, in which an independently elected President with significant executive powers coexists with a Prime Minister accountable to Parliament, as in France's Fifth Republic, has been proposed by some voices in Bangladesh's constitutional debate but has not achieved consensus support. The concern about semi-presidentialism in the Bangladeshi context is that giving the President significant executive powers alongside the Prime Minister could create institutional conflict between the two executive offices, particularly when they are controlled by different political forces, without providing the institutional mechanisms for resolving that conflict that exist in France's more mature constitutional system.

6.2 Presidential Power in Comparative Perspective: France, Germany, and the Dual Executive Models

The comparative study of presidential and semi-presidential constitutional systems provides important context for evaluating Bangladesh's current and proposed presidential arrangements. Three comparative models are particularly instructive.

France's Fifth Republic, designed by Charles de Gaulle in 1958 to address the governmental instability of the Fourth Republic, established a distinctive dual executive in which the directly elected President has significant constitutional powers in foreign policy, national defense, and the appointment of the Prime Minister, while the Prime Minister leads the government and is accountable to the National Assembly. This system has produced remarkable governmental stability in France, but it has also experienced episodes of "cohabitation," in which the President and Prime Minister come from different political parties, creating institutional tension and procedural complexity. The periods of cohabitation in 1986-88, 1993-95, and 1997-2002 demonstrated that the semi-presidential system can function during cohabitation but at the cost of constitutional ambiguity about which executive holds effective authority.

Germany's Federal Republic provides a contrasting model in which the Federal President is a largely ceremonial figure, elected by the Federal Assembly rather than by direct popular vote, and has played a historically important but institutionally constrained role as constitutional guardian. The German President's most significant constitutional powers are the right to refer legislation to the Federal Constitutional Court, the right to refuse to countersign legislation believed to be unconstitutional, and the ability to dissolve the Bundestag in certain specified circumstances. These powers, while rarely exercised, provide an important constitutional safety valve against the passage of clearly unconstitutional legislation and against governmental deadlock in cases of severe parliamentary crisis.

The German model of a largely ceremonial but constitutionally significant presidency is closer to what the July Charter's reform proposals envision for Bangladesh than either the French semi-presidential model or the American presidential model. The key element is the President's ability to act as an independent constitutional guardian in extreme situations, refusing to sign clearly unconstitutional legislation and playing an independent role in the appointment of key constitutional institutions, while remaining outside the normal processes of competitive partisan politics.

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The constitutional question for Bangladesh is whether giving the President these additional powers without also ensuring the genuine independence of the presidential election process creates the conditions for effective constitutional guardianship. If the President is elected by a Parliament dominated by the governing party, the President will typically be a political ally of the Prime Minister rather than an independent constitutional figure. The requirement for election by both houses of Parliament with majority votes, as proposed, provides some protection against this, but only if the Senate is sufficiently independent of the governing party to provide a genuine counterweight.

6.3 The Term Limit Proposal: Democratic Accountability and Executive Power

The proposal to limit any person's service as Prime Minister to a maximum of ten years, incorporated in the July Charter as one of the thirty consensus reform proposals, addresses one of the most obvious structural vulnerabilities of Bangladesh's executive system: the absence of any constitutional constraint on the indefinite re-election of a Prime Minister supported by a compliant parliamentary majority.

The constitutional case for term limits rests on several arguments. First, the historical argument: in Bangladesh's specific constitutional context, long tenure in the Prime Minister's office has been systematically associated with the erosion of constitutional checks, the politicization of constitutional institutions, and the abuse of executive power. Sheikh Hasina's fifteen consecutive years in office from 2009 to 2024 are the most striking example, but the pattern is not unique to her: the concentration of power that comes with extended tenure in Bangladesh's hyper-executive system creates structural incentives for institutional capture that appear to be difficult to resist regardless of the initial democratic commitments of the person who holds power.

Second, the democracy argument: term limits ensure that executive power rotates among democratic competitors, preventing the accumulation of institutional advantages, networks of political obligation, and bureaucratic loyalties that come with extended tenure and that make it progressively more difficult for challengers to compete on equal terms in subsequent elections. In Bangladesh's context, where incumbency advantages have been dramatically amplified by the governing party's control of state resources and institutions, term limits represent an important constitutional mechanism for maintaining the competitive character of democratic politics.

Third, the institutional design argument: term limits change the incentive structure of executive behavior in important ways. A Prime Minister serving a final term has no electoral incentive to accumulate political capital through institutional manipulation, which may make them more willing to accept genuine accountability. However, this argument must be qualified by the observation that term-limited executives may also feel less constrained by future electoral consequences in other respects, making them more willing to engage in bold but potentially irresponsible actions.

The proposed ten-year limit, equivalent to approximately two four-year or two five-year terms, is modestly calibrated. It is long enough to allow a Prime Minister to develop and implement long-term policy programs while creating a constitutional ceiling on the accumulation of executive power that comes with extended tenure. The comparison with presidential term limits in other

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countries suggests that two terms of four to five years each is a broadly accepted benchmark: the United States limits its president to two four-year terms (eight years), France's president to two five-year terms, and many other constitutional systems to comparable limits.

The more challenging constitutional question is how the term limit interacts with the parliamentary system's accountability logic. In a presidential system, the term limit is straightforward: the President cannot run for re-election after serving the maximum number of terms. In a parliamentary system, the Prime Minister's continuation in office depends on maintaining the confidence of Parliament, and the constitutional mechanism for imposing a term limit requires careful design to prevent circumvention through the use of parliamentary procedures to formally "reset" the term counter.

CHAPTER SEVEN: LEGISLATIVE PROCEDURE, PARLIAMENTARY COMMITTEES, AND THE QUALITY OF LAW-MAKING

7.1 The Legislative Process: Constitutional Framework and Political Reality

The legislative process in Bangladesh, as established by the Constitution and the Rules of Procedure of Parliament, follows the general Westminster parliamentary pattern with three readings and committee review of government bills. Article 80 provides for the parliamentary procedure for introducing and passing bills, and Articles 81 through 92 establish the specific procedures for money bills, the annual budget, and supplementary estimates.

The constitutional framework for the legislative process, considered in isolation, appears to provide a reasonable degree of deliberative scrutiny for legislation. Bills must pass through multiple readings, committees have the power to recommend amendments, and the Speaker is constitutionally required to manage the conduct of parliamentary business in accordance with the Rules of Procedure. The theoretical picture is one of measured and reasoned deliberation.

The reality of legislative practice in Bangladesh has been dramatically at odds with this theoretical picture. The overwhelming majority of government legislation is passed with minimal deliberative scrutiny, in sessions that are often extremely brief and in which committee consideration is perfunctory. The quality of legislative drafting has been persistently criticized by legal practitioners and constitutional scholars, with laws that are internally inconsistent, unclear in their application, or constitutionally problematic regularly enacted without adequate legal review. The phenomenon of "ordinance raj," in which the executive uses presidential ordinances promulgated between parliamentary sessions to effectively legislate without parliamentary scrutiny, has been a significant mechanism for bypassing the constitutional legislative process.

The Bangladesh Code, the compilation of national legislation, reflects the accumulated deficiencies of fifty years of inadequately scrutinized law-making: it contains numerous laws that are inconsistent with each other, that use undefined terms, that delegate legislative power to executive agencies without adequate standards or constraints, and that have never been subjected to the systematic legal review that would be necessary to identify and address these problems.

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The quality of the legislative output of Bangladesh's Parliament is, in this sense, one of the indirect consequences of the executive dominance that Article 70 has enabled: when MPs are constitutionally required to pass whatever the government proposes, the incentive to invest in high-quality legislative drafting and deliberative scrutiny is correspondingly reduced.

7.2 Parliamentary Committees: The Potential and the Reality

Parliamentary committees are constitutionally provided for in Article 76 of the Bangladesh Constitution, which authorizes Parliament to establish committees from among its members. The current committee structure includes standing committees corresponding to each ministry, the Public Accounts Committee, the Estimates Committee, and various special committees established for specific purposes.

Parliamentary committees have been consistently identified as potentially the most important institutional mechanism for improving legislative scrutiny and executive accountability within the parliamentary system, even without changing the more fundamental constitutional provisions. If committees had genuine independence from executive influence, adequate staffing and research support, consistent access to government information and officials, and the political culture to conduct genuinely adversarial scrutiny of executive conduct, they could provide meaningful accountability even within the constraints of Article 70.

The reality of Bangladesh's parliamentary committee experience has fallen well short of this potential. Committees have been consistently chaired by government MPs loyal to the executive, staffed with inadequate research support, denied access to sensitive government information, and operated in a culture that treats committee work as a procedural formality rather than a genuine accountability mechanism. The Public Accounts Committee, which should be the primary vehicle for scrutinizing executive expenditure against the findings of the Comptroller and Auditor General, has in periods of one-party parliamentary dominance been unable to pursue accountability for the financial misconduct documented in audit reports.

The reform proposals include specific provisions for strengthening parliamentary committees, including the requirement that the chairs of four key oversight committees, including the Public Accounts Committee, be elected from opposition MPs. This reform, modeled on the Westminster convention that the chair of the Public Accounts Committee is a senior opposition MP, would provide a structural guarantee of opposition leadership in the committees most critical for executive accountability. Its effectiveness will depend on whether the opposition chairs are given genuine authority, adequate staffing, and institutional support, and whether the committee culture can be changed from one of procedural performance to genuine scrutiny.

7.3 The Budget Process and Financial Accountability

The annual budget process is constitutionally the most important legislative event of the parliamentary year. The budget not only allocates public resources among competing priorities but also reflects the government's overall policy direction, its fiscal philosophy, and its assessment of the country's economic challenges and opportunities. The parliamentary scrutiny

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of the budget is therefore among the most important accountability functions that Parliament performs.

Bangladesh's budget process, as established by Articles 87 through 92 of the Constitution, follows the Westminster parliamentary convention of a government-introduced money bill that can only be amended in ways that reduce rather than increase proposed expenditure. The Finance Minister presents the annual budget to Parliament, a process that has in recent years been accompanied by substantial public ceremony and media coverage. Parliamentary debate on the budget takes place over a specified period, after which the Appropriation Bill is passed.

The substantive quality of parliamentary scrutiny of the budget has been consistently poor by international standards. The very short period typically allowed for parliamentary debate, the complexity and volume of the budget documents that MPs must review, the inadequate research support available to parliamentary members and committees, and the Article 70 constraint that prevents government MPs from voting against any budget provision regardless of its merits, all combine to ensure that Bangladesh's budget process provides very little genuine parliamentary accountability for executive financial decisions.

The Comptroller and Auditor General, a constitutional officer established by Article 128, provides independent audit of government expenditure and is a constitutionally important safeguard against financial irregularity. The CAG's reports have on numerous occasions identified significant irregularities in government expenditure, but the accountability consequences of these findings have been limited by the weakness of the parliamentary committee process and by the government's ability to control the political consequences of damaging audit findings. Strengthening the independence and operational capacity of the CAG, and ensuring that the Public Accounts Committee's scrutiny of CAG reports results in genuine accountability, is a critical element of financial governance reform that the current constitutional reform process must address.

CHAPTER EIGHT: THE CARETAKER GOVERNMENT SYSTEM: CONSTITUTIONAL HISTORY, ABOLITION, AND REINSTATEMENT

8.1 The Caretaker System: Origins, Design, and Constitutional Logic

The Non-Party Caretaker Government system, introduced by the Thirteenth Amendment to the Bangladesh Constitution in 1996, is one of the most innovative constitutional devices in the comparative constitutional literature and one of the most instructive examples of the limits of institutional design in the face of political will to circumvent constitutional arrangements. Understanding its origins, its logic, its abolition, and the current proposals for its reinstatement is essential for any serious engagement with Bangladesh's constitutional reform agenda.

The caretaker government system emerged from the specific problem of electoral integrity in Bangladesh's political context. The 1988 and 1991 elections, conducted under partisan governments, were marred by serious allegations of manipulation of the electoral process by the

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incumbent government, using state resources, the police, and the civil service to favor the ruling party. The 1996 election boycott by the principal opposition parties, followed by the political crisis that produced the Thirteenth Amendment's caretaker provisions, reflected the political conclusion that Bangladesh's political culture was so thoroughly dominated by the competitive use of state power for electoral advantage that genuinely free and fair elections could only be conducted if political governance was temporarily transferred to a neutral authority for the duration of the electoral period.

The caretaker government system as established by the Thirteenth Amendment transferred executive power for the period between the dissolution of Parliament and the announcement of election results to a non-partisan body headed by the most recently retired Chief Justice of Bangladesh, and advised by advisers drawn from persons previously nominated through a constitutionally specified process. The caretaker government's mandate was strictly limited to the routine administration of the country and the conduct of a free and fair election; it was explicitly prohibited from making any policy decisions beyond those necessary for day-to-day governance.

The constitutional innovation was remarkable in several respects. First, it represented an explicit constitutional acknowledgment that the normal constitutional framework of parliamentary government was insufficient to ensure electoral integrity in Bangladesh's political context. This was an honest, if uncomfortable, admission that the constitutional theory of democratic accountability had failed in practice and that extraordinary constitutional measures were necessary to restore the minimum conditions for genuine democratic competition. Second, it created a form of temporary constitutional authority that had no precedent in the Westminster parliamentary tradition and that drew on Bangladesh's own political experience rather than any pre-existing constitutional model.

The caretaker system operated for three electoral cycles, in 1996, 2001, and 2008, and each of these elections was widely acknowledged as significantly more free and fair than the elections conducted under partisan governments that had preceded them. The system was not without its problems: the neutrality and competence of particular caretaker advisers were occasionally questioned, and the 2006-2007 transition to a caretaker government headed by a President rather than a retired Chief Justice, following a constitutional crisis over the Thirteenth Amendment's procedures, produced the military-backed emergency government of 2007-2008, which was not what the caretaker system's architects had intended.

8.2 The Abolition of the Caretaker System: Constitutional and Political Analysis

The Fifteenth Amendment's abolition of the caretaker government system in 2011 was one of the most consequential and constitutionally controversial changes in Bangladesh's constitutional history. The legal basis for the abolition was the Supreme Court's decision in Bangladesh Italian Marble Works v. Government of Bangladesh (2010), known as the Eighth Amendment case, in which the court, responding to a constitutional petition, found that the caretaker system was incompatible with the constitutional principle of democratic governance because it placed executive power in the hands of an unelected caretaker government for a significant period. The court's majority observed, in obiter, that while the caretaker system had been constitutionally

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valid when introduced as a temporary measure, it might over time cease to be constitutionally appropriate.

The Awami League government used this obiter observation as constitutional cover for the Fifteenth Amendment's abolition of the caretaker system, despite the fact that the court had not actually declared the caretaker system unconstitutional and had in fact upheld its continuing validity at the time of the decision. This use of judicial obiter dicta to justify a constitutional amendment that the court had not in fact required is one of the more remarkable examples in Bangladesh's constitutional history of the governing party deploying constitutional forms to achieve politically motivated constitutional changes.

The constitutional argument for the caretaker system's abolition rested on the principle of democratic governance: a system in which elected officials are periodically displaced by unelected caretakers is not fully consistent with the constitutional value of democratic self-governance. This argument has some theoretical force, but it ignores the practical context in which the caretaker system operated: in Bangladesh's political environment, the alternative to an unelected caretaker government conducting elections was not genuine democratic governance but a partisan government using state power to ensure its own re-election, which is a far more serious violation of democratic values.

The consequences of the caretaker system's abolition were precisely what critics had predicted: the 2014 and 2018 elections were conducted under partisan governments and were marred by serious electoral irregularities that produced results that did not credibly reflect genuine voter preferences. The 2024 uprising that brought down the Awami League government was partly a consequence of the cumulative illegitimacy of these manipulated elections and the constitutional architecture that had made them possible.

8.3 The Reinstatement of the Caretaker System: Constitutional Design Challenges

The July Charter's inclusion of the caretaker government system's reinstatement as one of the core reform proposals reflects the political consensus that the caretaker mechanism's abolition was a mistake and that the conditions that made it necessary in the 1990s continue to exist in Bangladesh's political environment. The reinstatement is arguably the reform proposal with the broadest cross-party political support, which is perhaps not surprising given that every major political party other than the Awami League has experienced the electoral disadvantage of competing against an incumbent government in the post-2011 constitutional environment.

The constitutional design of the reinstated caretaker system must address the problems that became apparent in the original version's operation, particularly the ambiguity about the selection of the Chief Adviser when the constitutional formula for automatic selection produced a politically unacceptable candidate, and the absence of clear rules for resolving disagreements between the caretaker government and political parties about the conduct of the electoral process.

The July Charter proposes that the caretaker government be formed through a consensus process involving the ruling party, the main opposition, and the second opposition party. The Constitutional Reform Commission had proposed that the Chief Adviser be selected jointly by

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the National Constitutional Council and the President. These different formulas reflect different assessments of what institutional mechanism can best guarantee the neutrality and competence of the caretaker government in Bangladesh's specific political context.

The fundamental tension in the design of any caretaker system is between neutrality and accountability. A genuinely neutral caretaker government, staffed by persons with no political affiliations or obligations to any party, is most likely to conduct elections impartially. But such a government may also lack the political legitimacy and democratic accountability that constitutional governance requires, and may be vulnerable to capture by military or other non-political forces, as the 2007-2008 experience demonstrated. A caretaker government constituted through political negotiation, as the July Charter's consensus process envisages, is more accountable but may be less neutral.

The jurisprudential dimension of the caretaker system has generated significant scholarship on what has been called the "constitutional gap" problem: when normal constitutional processes are insufficient to maintain the minimum conditions for constitutional governance, what constitutional authority, if any, exists to establish extraordinary measures? The Bangladesh Supreme Court's approach to the caretaker system, in both upholding and then providing cover for the abolition of the system, illustrates how the judiciary can be drawn into questions about the minimum conditions for constitutional democracy that raise profound jurisprudential questions about the relationship between constitutional law and political reality.

CHAPTER NINE: LOCAL GOVERNMENT AND THE DECENTRALIZATION IMPERATIVE

9.1 The Constitutional Framework for Local Government

Part IV of the Bangladesh Constitution, specifically Article 59, directs the state to establish local government bodies in each administrative unit, composed of elected persons, with responsibility for the performance of administrative functions relating to public services, the maintenance of public order, and the preparation and implementation of plans relating to public services and economic development. This constitutional mandate for decentralized local governance is among the most consistently unfulfilled promises of the Bangladesh constitutional order.

The philosophical case for local government rests on multiple constitutional principles that have been extensively developed in the comparative local government law literature. The principle of subsidiarity, associated with Catholic social teaching and incorporated explicitly into the constitutional framework of the European Union, holds that decisions should be made at the lowest level of governance capable of effectively addressing the relevant matter. Local governance is not merely administratively efficient; it is democratically important because it brings government closer to citizens, increases the range of opportunities for citizen participation in governance, and promotes the civic education that comes from engagement with local public affairs.

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The constitution's commitment to local government in Article 59 has been implemented through a series of legislative and administrative arrangements: Union Parishads at the local level, Upazila Parishads at the sub-district level, Zila Parishads at the district level, City Corporations and Pourashavas for urban areas, and Hill District Councils for the Chittagong Hill Tracts under the Peace Accord framework. However, the actual power and resources devolved to these local bodies have fallen far short of what the constitutional commitment to meaningful local governance requires.

The dominance of the national government over local governance in Bangladesh is multi-dimensional. Financial dominance: local government bodies are overwhelmingly dependent on transfers from the national government for their resources, because the constitutional and statutory framework for local taxation is inadequate, which means that local governments lack the fiscal autonomy necessary for genuine self-governance. Administrative dominance: national government officials, particularly the cadre of civil servants from the Bangladesh Administrative Service, exercise authority over local government administration that subordinates locally elected bodies to centrally appointed bureaucrats. Political dominance: local government elections have historically been significantly more subject to ruling party interference than national elections, because the monitoring capacity of election observers is less at the local level and because the political stakes of local control are high in a governance system where state resources flow through local government channels.

The July Charter's commitment to strengthening local government is expressed in general terms rather than in specific constitutional provisions, which reflects the difficulty of building consensus on the details of a decentralization agenda that has significant implications for the distribution of political and financial power between the national government and local political elites. The Constitutional Reform Commission's proposals for a Local Government Commission and for enhanced constitutional protection of local government autonomy would, if implemented with genuine political will, represent a significant advance in the constitutional framework for local self-governance.

9.2 The Chittagong Hill Tracts Local Governance: Constitutional Promise and Political Reality

The Hill District Councils established under the Chittagong Hill Tracts Peace Accord of 1997 represent a distinctive form of local governance in Bangladesh: autonomous elected councils for the three hill districts of Rangamati, Khagrachhari, and Bandarban, with specific powers over matters affecting indigenous peoples and with a tribal majority requirement in their composition. The Hill District Councils represent the closest approximation in Bangladesh's governance system to the principle of territorial autonomy for indigenous peoples that international standards require.

The implementation of the Hill District Councils' constitutional mandate has been chronically deficient. Subjects that were supposed to be transferred to the Councils' jurisdiction, including land administration, police, and primary education in the tribal language, remain effectively under the control of central government agencies or the military. The Councils lack adequate revenue, have been unable to exercise meaningful control over the development activities that

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affect their populations and territories, and have been politically margined by the continued dominance of the military and national government agencies in the CHT's governance.

The constitutional reform proposals include provisions for strengthening the legal framework for autonomous governance in the CHT, but the specific mechanisms and the level of political commitment required to make them effective remain unclear. The relationship between the national government and the CHT's indigenous peoples, shaped by decades of conflict, military occupation, and inadequately implemented peace agreements, requires constitutional arrangements that are both structurally robust and politically sustainable. Designing such arrangements is one of the most demanding challenges facing Bangladesh's constitutional reform process.

CHAPTER TEN: THE ELECTION COMMISSION AND ELECTORAL INTEGRITY: CONSTITUTIONAL FRAMEWORK AND REFORM PROPOSALS

10.1 The Constitutional Position of the Election Commission

The Election Commission is a constitutional body established by Articles 118 through 126 of the Bangladesh Constitution, responsible for preparing electoral rolls, delimiting constituency boundaries, and superintending, directing, and controlling the conduct of elections to the offices of President and members of Parliament. The constitution provides for the independence of the Election Commission, specifying that members of the commission shall not be removable except by an address of Parliament and that they shall hold office for a fixed term.

The formal constitutional independence of the Election Commission has been systematically compromised in practice by the appointment process, which has historically been entirely within the Prime Minister's control. An Election Commission whose members are appointed by and accountable to the incumbent government cannot provide the genuine electoral oversight that constitutional democracy requires, regardless of the formal independence provisions that surround it. The pattern of partisan appointments to the Election Commission was so consistently associated with electoral manipulation under Awami League governments that the restoration of the commission's genuine independence became one of the central demands of the 2024 uprising.

The July Charter's proposals for reforming the Election Commission appointment process represent one of the consensus reforms agreed by the political parties. The proposed appointment mechanism involves the Speaker, Deputy Speaker, Prime Minister, Leader of the Opposition, and Chief Justice, a broader consultative process that would make it more difficult for a single party to dominate the appointment of all commission members. This reform, if implemented, would represent a significant improvement in the institutional independence of the Election Commission.

The reform of electoral constituency delimitation is an equally important, if technically complex, reform. Electoral constituency boundaries have historically been drawn by the Election Commission under processes that were vulnerable to gerrymandering, the deliberate drawing of

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boundary lines to favor particular political parties. The July Charter's proposal to transfer the constituency delimitation function from the Election Commission to a specialized parliamentary committee would provide greater political accountability for the delimitation process, though it would also create risks of partisan manipulation of a different kind if the committee is dominated by the governing party.

10.2 Electoral Laws and Electoral Reform: A Comprehensive Analysis

Bangladesh's electoral law framework, comprising the Representation of the People Order 1972, the Electoral Rolls Act 2009, and various associated regulations, governs the detailed processes of voter registration, candidacy, campaign conduct, polling, and result declaration. This legal framework has been the subject of persistent criticism for its inadequacy in addressing the specific forms of electoral manipulation that have characterized Bangladesh's electoral history.

The most significant vulnerabilities in the electoral legal framework include the inadequate regulation of campaign finance, the weakness of restrictions on the use of state resources for campaign purposes, the inadequate criminal penalties for electoral offenses, the absence of effective pre-election observation mechanisms, and the limitations on international election observer access. Each of these vulnerabilities has been exploited in the conduct of elections that were subsequently found to be seriously flawed.

Campaign finance regulation is particularly important in Bangladesh's political context, where the influence of money in politics, including both the role of business interests in funding political parties and the direct purchase of votes, has been a significant factor in electoral outcomes. Bangladesh has no effective system of public funding for political parties or election campaigns, no real-time disclosure of campaign expenditures, and inadequate investigation and prosecution of campaign finance violations. The result is an electoral system in which financial resources play a disproportionate role in determining electoral outcomes, systematically disadvantaging candidates and parties without access to large private funding networks.

CONCLUDING REFLECTIONS TO PART THREE

The examination conducted in this third part of the textbook has traced the constitutional design and political reality of Bangladesh's parliamentary system from the foundational provisions of the 1972 Constitution through five decades of institutional deformation and political abuse to the reform proposals of the current period. The overarching conclusion is clear and sobering: the constitutional architecture of Bangladesh's legislative and executive system has, through a combination of deliberate design choices, politically motivated constitutional amendments, and the systematic exploitation of structural vulnerabilities, produced a system of governance in which the formal mechanisms of democratic accountability have been rendered largely inoperative.

The primary driver of this constitutional pathology is the concentration of executive power in the Prime Minister's office, enabled most directly by Article 70's prohibition on parliamentary free

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voting and amplified by the governing party's control over the appointment of constitutional oversight bodies, the electoral machinery, and the judicial system. The result has been not the parliamentary democracy that the constitution nominally establishes but what the Constitutional Reform Commission has accurately described as "authoritarian legacies" embedded in constitutional form.

The reform proposals represent a genuine and thoughtful attempt to address the structural causes of this pathology. The introduction of a bicameral legislature with a proportionally elected upper house, the reform of Article 70 to permit free voting on non-confidence and non-financial matters, the establishment of the National Constitutional Council for constitutional appointments, the enhancement of presidential powers as an independent constitutional check, the reinstatement of the caretaker government system, and the term limit on the Prime Minister all address, from different angles, the same fundamental constitutional problem of unchecked executive dominance.

Whether these reforms will be effective depends on factors that go beyond the constitutional text: the political will of the BNP government to implement reforms that will constrain its own future exercise of power, the quality of the institutional design details that have not yet been worked out, the capacity of Bangladesh's constitutional courts to enforce the reformed provisions against political pressure, and the degree to which Bangladesh's political culture can shift from the competitive use of state power for partisan advantage toward a genuine constitutional culture of accountability and restraint.

The constitutional community of Bangladesh, including the scholars, practitioners, civil society advocates, and engaged citizens who have invested in the current reform process, must engage with these questions not as abstract institutional design problems but as urgent practical challenges whose resolution will shape the lived political experience of Bangladesh's more than 170 million citizens. The reform of the legislative and executive constitutional architecture is not the end of Bangladesh's constitutional journey but its most consequential ongoing chapter.

FURTHER READING AND KEY SOURCES FOR PART THREE

On parliamentary government, bicameralism, and comparative legislative design, students should consult Lijphart, Arend, Patterns of Democracy (1999) and Democracies (1984); Tsebelis, George, and Money, Jeannette, Bicameralism (1997); Russell, Meg, Reforming the House of Lords (2000); and Linz, Juan, "The Perils of Presidentialism" (1990) and "The Virtues of Parliamentarism" (1990), both in Journal of Democracy.

On anti-defection laws and parliamentary free voting, students should consult Chowdhury, M. Jashim Ali, "Anti-Defection Law in Bangladesh" (various publications); the I.CONnect blog's February 2026 analysis of Article 70 by various authors; and comparative analyses of anti-defection provisions in Pakistan and India by Hasan Askari Rizvi and Granville Austin respectively.

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On the caretaker government system, students should consult Islam, Mahmudul, Constitutional Law of Bangladesh (chapters on the caretaker provisions); and Haque, Ridwanul, "Legitimacy, Constitutionalism and the Caretaker Government Controversy in Bangladesh" in various law journals.

On executive power and prime ministerial dominance, students should consult Barnett, Anthony, The Lure of Greatness (2017) for the British context; the Constitutional Reform Commission's Report (2025) for the Bangladeshi analysis; and the ConstitutionNet analyses of the July Charter's executive reform proposals by Haque and Bisarya (December 2025).

On electoral systems and electoral integrity, students should consult Norris, Pippa, Electoral Engineering (2004) and Why Elections Fail (2015); the International IDEA Primer on Direct Democracy; and the Election Commission of Bangladesh's various reports on electoral administration, available through the commission's official website.

On local government and decentralization, students should consult Rondinelli, Dennis, Decentralization in Developing Countries (1984); and the World Bank's various technical papers on local government finance and decentralization in Bangladesh, available through the Bank's publications database.

On the most recent developments in Bangladesh's parliamentary reform process as of March-April 2026, students should monitor the ConstitutionNet Bangladesh page for ongoing updates, the Daily Star and Prothom Alo's constitutional coverage, and the I.CONnect blog's analyses of the post-election constitutional developments, including the BNP's refusal of the second oath as Reform Council members and its implications for the implementation timeline.

End of Part Three

PART FOUR

THE JUDICIARY, JUDICIAL INDEPENDENCE, AND THE CONSTITUTIONAL ARCHITECTURE OF JUSTICE IN BANGLADESH: FROM STRUCTURAL DESIGN TO INSTITUTIONAL BETRAYAL AND THE STRUGGLE FOR GENUINE JUDICIAL AUTONOMY

PREFACE TO PART FOUR

Of all the institutions that a constitutional democracy requires in order to function as something more than an elaborate fiction, none is more consequential than an independent judiciary. This is not a banal observation made for rhetorical effect. It is, rather, a statement of structural logic that runs through every serious tradition of constitutional thought from Montesquieu's theory of separated powers to Dworkin's jurisprudence of rights, from the natural law tradition of Aquinas

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to the deliberative democratic theory of Habermas. The judiciary is the institution that translates the abstract promises of the constitutional text into the lived reality of rights, remedies, and accountability. Without a judiciary that is genuinely independent of the political branches of government, a constitution is at best an aspiration and at worst a deception: a solemn declaration of rights and limitations that the powerful can ignore whenever their interests require it, because no institution exists with the genuine authority and the genuine independence to enforce the declaration against them.

The history of Bangladesh's judiciary is, in the most fundamental sense, the history of this problem played out across five decades of constitutional life. The Constitution of 1972 established a judicial system that was, on its face, admirably designed to serve the functions that constitutional theory assigns to an independent judiciary. It created a Supreme Court with broad jurisdiction, protected judges from arbitrary removal, and declared that the judiciary would be separated from the executive in the delivery of justice. But the gap between this textual commitment to judicial independence and the actual institutional reality of Bangladesh's courts has been one of the defining features of the country's constitutional experience, a gap so wide and so persistent that understanding it is indispensable to understanding why the constitutional order failed so catastrophically under the governments that successively exploited it, and why the reform proposals of 2024 through 2026 have placed judicial independence at the center of their agenda.

This fourth part of the textbook undertakes a comprehensive examination of Bangladesh's constitutional framework for the judiciary, analyzing it from the interlocking perspectives of jurisprudential theory, comparative constitutional law, historical investigation, political analysis, and the specific legal and doctrinal controversies that have defined judicial constitutional life in Bangladesh. It examines the structural design choices of the 1972 Constitution and their theoretical foundations, traces the progressive erosion of judicial independence through constitutional amendments and political practice, analyzes the landmark jurisprudence through which the Supreme Court itself engaged with the constitutional questions raised by its own institutional situation, and evaluates the reform proposals of the current period against the benchmarks established by comparative constitutional experience and democratic theory.

The analysis that follows is informed by the most recent developments in Bangladesh's constitutional reform process, including the Supreme Court Secretariat Ordinance of November 2025, the Supreme Court Judge Appointment Ordinance of January 2025, the Appellate Division's landmark November 2025 judgment restoring the Thirteenth Amendment's caretaker provisions, the dramatic resignations of August 2024, the High Court Division's September 2025 ruling on Article 116, the constitutional referendum of February 2026, and the new BNP government's early decisions regarding the ordinances issued by the interim administration. These developments constitute the most consequential episode in Bangladesh's judicial constitutional history since the Masdar Hossain judgment of 1999, and understanding them requires the full depth of analysis that this part undertakes.

CHAPTER ONE: THE CONSTITUTIONAL DESIGN OF THE BANGLADESH JUDICIARY: ARCHITECTURE, THEORY, AND THE FOUNDING VISION

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1.1 The Judiciary in Constitutional Theory: Why Judicial Independence Is Not Optional

Before examining the specific constitutional provisions that establish Bangladesh's judicial system, it is necessary to engage seriously with the theoretical question of why judicial independence is considered a non-negotiable requirement of constitutional democracy rather than a desirable institutional preference that governments may or may not choose to honor. The answer to this question is not as obvious as it might appear, and engaging with it properly illuminates both the importance of what Bangladesh's constitution attempted to establish and the severity of what successive political governments proceeded to undermine.

The classical theoretical justification for judicial independence rests on the logic of the separation of powers, as articulated most influentially by Montesquieu in The Spirit of the Laws. Montesquieu's observation that there can be no liberty where the power of judging is not separated from the legislative and executive powers is often quoted but seldom fully unpacked. Montesquieu's argument was not merely that judges should be unbiased in individual cases, though that is certainly part of it. His deeper point was structural: if the same institution that makes the law also applies the law to individual cases, it will make the law in ways that serve its own interests, and it will apply the law in ways that serve those interests. The separation of the judicial power from the legislative and executive powers is therefore not primarily about the personal character of judges but about the systemic incentives that institutional design creates. A judge who depends on the executive for her continued tenure, her salary, her promotion, and the administrative support of her court is a judge who faces institutional pressures to decide cases in ways that please the executive, regardless of her personal integrity.

Alexander Hamilton, writing in Federalist No. 78, developed this argument with specific reference to the constitutional design of the American judiciary. Hamilton argued that an independent judiciary was essential to protect individual rights against what he called the ill humors of society as expressed through the legislature, and that this independence required, above all, security of tenure and guaranteed compensation for judges. The power of the judiciary lay in judgment, not in force or will, and to maintain the purity of that judgment, judges must be insulated from the pressures that force and will inevitably exert over those whose position depends on the favor of those who wield force and will. Hamilton's argument anticipates by two centuries the modern constitutional law scholarship on the relationship between judicial independence and the protection of constitutional rights.

The twentieth century saw significant theoretical elaboration of the foundations and requirements of judicial independence, particularly in the context of post-colonial and transitional constitutional systems where the challenges of maintaining genuine judicial independence proved especially acute. Lon Fuller's work on the inner morality of law identified certain formal requirements, including impartiality and consistency, that are constitutive of law itself rather than merely desirable features of a legal system. For Fuller, a system of governance in which judges systematically decided in favor of the state against individuals regardless of the legal merits of their claims would fail to be a legal system in any meaningful sense: it would be a system of coercion dressed in legal clothing. This Fullerian insight has important implications for Bangladesh, where the judicial system under authoritarian governments came progressively closer to this description.

Ronald Dworkin's influential rights-based jurisprudence provided a different but complementary theoretical foundation for judicial independence. On Dworkin's account, constitutional rights function as trumps that override the ordinary democratic process when the process threatens to trample upon the fundamental entitlements of individuals or minorities. For rights to function as

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genuine trumps, rather than as polite suggestions that the majority can override whenever it finds them inconvenient, there must be an institution capable of enforcing them against the democratic majority and its representatives. The judiciary, and the judiciary alone, is positioned to serve this function. But a judiciary that depends on the democratic majority for its institutional survival is a judiciary that cannot reliably enforce rights against that majority when it matters most, which is precisely when political pressure on the judiciary is at its most intense.

The scholarship on judicial independence in developing and transitional democracies has developed considerably since the foundational Anglo-American theoretical works. Tom Ginsburg's empirical research on judicial independence across constitutional systems, particularly his influential work on the insurance model of judicial independence, demonstrates that political actors create independent judiciaries not out of commitment to abstract principle but because they anticipate political uncertainty and want to preserve the possibility of appealing to judicial protection if they lose power. This insight has complex implications for constitutional design: it suggests that judicial independence is likely to be genuinely established only when significant political forces have an interest in protecting it, and it suggests that judicial independence is most likely to be eroded precisely when a dominant political force believes it will remain dominant indefinitely, because in those circumstances the insurance rationale for accepting constraints on political power disappears. Bangladesh's constitutional history provides textbook illustrations of both propositions.

Ran Hirschl's important scholarship on comparative constitutionalism adds a further dimension to the analysis. Hirschl's concept of hegemonic preservation, the idea that powerful elites deliberately design constitutional systems, including independent judiciaries, in ways that entrench their own power while appearing to serve democratic values, raises important questions about the relationship between constitutional design and political interest that are directly relevant to understanding who designed the Bangladesh constitutional system, what interests they served, and why subsequent political actors found it in their interest to dismantle the judicial independence provisions they had nominally inherited. Hirschl's framework does not lead to cynicism about judicial independence as a constitutional value, but it does caution against naive assumptions that constitutional provisions for judicial independence will automatically translate into institutional reality in the absence of genuine political will to sustain them.

Recent scholarship has also engaged seriously with what might be called the democratic dilemma of judicial review: if courts are genuinely independent of democratic control, how is their exercise of constitutional review authority democratically legitimate? This question has generated an enormous body of constitutional theory, including the influential contributions of Jeremy Waldron, who has argued that in well-functioning democracies, elected legislatures rather than appointed courts should be the primary guardians of rights, and of those who, like Robert Post and Reva Siegel, have argued for understanding constitutional adjudication as a form of democratic conversation rather than unilateral judicial supremacy. This theoretical debate is not merely academic for Bangladesh, where the legitimacy of judicial review has been contested in ways that have had direct constitutional consequences, including most dramatically the use of judicial authority to validate constitutional amendments that stripped democratic protections from the constitutional order.

1.2 The Original Constitutional Framework: Articles 94 Through 117

The constitutional framework for the judiciary in Bangladesh is established primarily in Part VI of the Constitution, which is titled The Judiciary and runs from Article 94 to Article 117. These

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provisions establish the structure of the Supreme Court, provide for the appointment, tenure, and removal of judges, define the jurisdiction of the courts, guarantee the independence of the judiciary, and establish the constitutional relationship between the superior courts and the subordinate judiciary.

Article 94(1) establishes the Supreme Court of Bangladesh, consisting of an Appellate Division and a High Court Division. This unitary structure, with two divisions of a single Supreme Court rather than separate courts at different levels of the judicial hierarchy, reflects the Westminster model of judicial organization that the constitutional drafters inherited from the British and Indian constitutional traditions. The Chief Justice of Bangladesh heads the entire Supreme Court and, by virtue of this position, exercises the highest judicial authority in the land. Articles 94(4) and 95 through 99 govern the composition of the two divisions and the qualifications for appointment as a judge.

The jurisdiction of the High Court Division is defined in Article 101, which grants the division original jurisdiction in matters specified in the Constitution, appellate jurisdiction over courts and tribunals below it, and superintendence and control over all subordinate courts and tribunals. The original jurisdiction of the High Court Division includes, most importantly for constitutional purposes, the writ jurisdiction conferred by Article 102, which is the constitutional provision through which the court exercises its power of judicial review over administrative action and enforces fundamental rights. Article 102 is among the most consequential provisions in the entire Constitution: it is the gateway through which citizens can seek the court's protection of their constitutional rights against state action, and the breadth or narrowness of its interpretation defines the practical scope of the fundamental rights guaranteed in Part III of the Constitution.

Article 102(1) gives the High Court Division the power to give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of the Constitution. Article 102(2) gives the Division the power to declare the acts of public authorities unlawful, compel them to do what they are legally required to do, restrain them from doing what they are legally prohibited from doing, and declare the legal rights of persons who allege that their rights have been violated. These writ powers correspond roughly to the common law prerogative writs of mandamus, certiorari, prohibition, habeas corpus, and quo warranto, and they provide the primary constitutional mechanism for judicial accountability of the executive.

The Appellate Division's jurisdiction is defined in Articles 103 and 105. Article 103 gives the Appellate Division jurisdiction to hear appeals from the High Court Division in both civil and criminal matters and to issue directions for the transfer of cases from one court to another. Article 105 gives the Appellate Division the authority to review its own decisions, a power that was to become extremely significant in the constitutional controversies surrounding the caretaker government system, as the Appellate Division in 2025 exercised precisely this review power to overturn its own 2011 judgment that had struck down the Thirteenth Amendment.

The provisions governing the appointment of Supreme Court judges are contained in Articles 95 through 98. Article 95(1) provides that the Chief Justice shall be appointed by the President, and that other judges shall be appointed by the President after consultation with the Chief Justice. Article 98 provides for the appointment of additional judges for temporary periods. The original constitutional text contained no qualification on the President's power of appointment beyond the requirement of consultation with the Chief Justice, and no definition of what consultation required or what weight the Chief Justice's views should carry. The relationship between this

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consultation requirement and the convention that the President acts on the advice of the Prime Minister, established by Article 48(3), would become one of the central constitutional controversies of Bangladesh's judicial history.

The tenure and removal of judges is governed by Articles 96 through 97. Article 96 provides that a judge of the Supreme Court shall hold office until he attains the age of sixty-seven years, subject to removal by the President on an address by Parliament supported by a majority of the total membership of Parliament and a two-thirds majority of members present and voting, for proved misbehavior or incapacity. This parliamentary removal mechanism, borrowed from the Indian constitutional model and ultimately traceable to the British parliamentary tradition of removing judges by address, was designed as a safeguard against arbitrary executive interference with judicial tenure. The subsequent constitutional history would reveal significant weaknesses in this design, as the mechanism proved both inadequate to protect judges from political pressure and susceptible to manipulation as a political weapon against judges who decided against the governing party.

Article 116, which governs the control and discipline of persons in the judicial service and magistrates exercising judicial functions, became one of the most constitutionally contested provisions in the entire Bangladesh Constitution. In the original 1972 text, Article 116 placed the control, including the power of postings, promotions, grants of leave, and discipline, of all persons in the judicial service and magistrates exercising judicial functions in the hands of the Supreme Court. The clear constitutional intention was that the judiciary would be self-governing in its personnel management, insulated from the executive influence that would inevitably result if judges' career prospects depended on the decisions of government officials.

This original constitutional design was radically altered by the Fourth Amendment in 1975, which transferred control of the subordinate judiciary from the Supreme Court to the President, effectively placing the career management of subordinate judges in the hands of the executive. The subsequent constitutional amendments maintained and in some respects deepened this executive control, creating the structural conditions for the systematic political manipulation of the subordinate judiciary that would characterize Bangladesh's judicial administration for the following four decades. The restoration of the original constitutional design of Article 116 became one of the central demands of the judicial independence movement and a primary objective of the constitutional reform process initiated after the July 2024 uprising.

1.3 The Guarantee of Judicial Independence: Article 22 and Its Implications

Article 22 of the Constitution provides a foundational constitutional guarantee of judicial independence. It reads, in the relevant part, that the state shall ensure the separation of the judiciary from the executive organs of the state. This provision is located in Part II of the Constitution, titled Fundamental Principles of State Policy, which means that it is formally in the category of directive principles rather than justiciable fundamental rights. The implications of this categorization for the enforceability of the judicial independence guarantee have been extensively debated in Bangladesh's constitutional jurisprudence.

The interpretive controversy around Article 22 turns on the relationship between the directive principles of Part II and the enforceable provisions of Parts III and VI. The general position in Bangladesh's constitutional jurisprudence, following the approach developed in Indian constitutional law, is that the directive principles do not create individually enforceable rights but do provide authoritative guidance for the interpretation of other constitutional provisions and for legislative action. However, the landmark Masdar Hossain judgment of 1999 went considerably

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further, treating Article 22 not merely as a directive principle but as a foundational constitutional requirement that generated specific enforceable obligations, and using it in combination with Articles 94, 109, 116, and 116A to derive a comprehensive doctrine of judicial independence that the executive was constitutionally required to implement.

The theoretical foundations of the Masdar Hossain approach to Article 22 deserve careful examination. The court's reasoning drew on the concept of basic structure doctrine, developed by the Indian Supreme Court in the Kesavananda Bharati case of 1973, which holds that certain foundational principles of a constitution are so essential to its identity and purpose that they cannot be abrogated even by the constitutional amendment process. The Bangladesh Supreme Court had already, in the Anwar Hossain Chowdhury case of 1989, established that the basic structure doctrine applied to the Bangladesh Constitution. The identification of judicial independence as a basic structural principle of the Constitution, which the Masdar Hossain court implicitly endorsed by treating it as an enforceable constitutional requirement, was a jurisprudential move of enormous significance: it meant that constitutional amendments that undermined judicial independence were not merely politically undesirable but constitutionally impermissible.

Article 116A, added by the Fourth Amendment and retained through subsequent revisions, provides that in the exercise of judicial functions, a court or a judicial officer shall be subject only to the Constitution and the law. This provision represents a guaranty of judicial immunity from executive direction in the exercise of adjudicative functions, even as other provisions of the Fourth Amendment transferred administrative control over the subordinate judiciary to the executive. The gap between Article 116A's guarantee of decisional independence and the executive control over judicial careers established by Article 116 as amended created a structural tension in the constitutional design of the subordinate judiciary that the Masdar Hossain judgment was, in part, an attempt to resolve.

1.4 Comparative Constitutional Perspectives on Judicial Design

The constitutional design of Bangladesh's judiciary is best understood in comparative context, and the comparison reveals both the strengths and the weaknesses of the original design and the subsequent amendments. The major models of judicial constitutional design available in the comparative constitutional literature represent different approaches to the fundamental challenge of creating an institution powerful enough to enforce constitutional constraints on the political branches while remaining institutionally independent of those branches.

The American model, established by the Constitution of 1787 and elaborated by the practice of nearly two and a half centuries, features life tenure for Supreme Court justices, appointment by the President with Senate confirmation, and a tradition of judicial review dating from Marbury v. Madison in 1803. The life tenure model creates extraordinarily strong decisional independence, since judges who cannot be removed by the political branches have no career incentive to defer to them. But it also creates democratic accountability problems, since judges appointed by presidents of a particular political orientation may exercise constitutional authority in ways that the democratic majority finds unacceptable for decades after the appointing president has left office. The American model's concentration of constitutional appointments in the presidency and Senate, without involvement of the existing judiciary or of judicial service commissions, means that appointment decisions are inevitably political, and that the political composition of the Supreme Court over time reflects the historical pattern of presidential election results.

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The British model, historically based on parliamentary sovereignty rather than constitutional review, has evolved considerably since the enactment of the Human Rights Act 1998 and the creation of the Supreme Court in 2009. The UK Judicial Appointments Commission, established in 2005, removes the formal power of judicial appointment from the Lord Chancellor (who is a political figure) and places it in the hands of a body composed primarily of judges and lay members. While the Lord Chancellor retains a formal role in the process, the practical power has shifted significantly toward the commission, creating a model of depoliticized appointment that has generated considerable interest in comparative constitutional circles. This model influenced the design of judicial appointment reforms in Bangladesh's 2025 ordinances.

The German Federal Constitutional Court model is perhaps the most studied alternative to the Anglo-American tradition. The Basic Law establishes a specialized constitutional court, separate from the ordinary federal judiciary, with responsibility for constitutional review. Judges of the Federal Constitutional Court serve twelve-year non-renewable terms, are appointed by both houses of the federal legislature, and must have specific constitutional law qualifications. The non-renewable fixed term is particularly significant: it removes the incentive for judges to make appointment-pleasing decisions in order to enhance their prospects for reappointment, while the finite term ensures that the court's composition changes at a regular pace that bears some relationship to changing political circumstances.

The South African Constitutional Court, established by the post-apartheid Constitution of 1996, incorporates elements of several models. Judges are appointed by the President of the Republic on the advice of the Judicial Service Commission, an independent body with diverse membership including judges, legal practitioners, academics, and political representatives. The Constitutional Court judges serve twelve-year non-renewable terms. The South African model is particularly relevant for post-colonial and transitional constitutional contexts because it was designed specifically to address the challenge of building an independent and legitimate judiciary in a society emerging from a history of profound institutional injustice and political corruption of the legal system. The South African Constitution's explicit recognition that the legitimacy of the judiciary depends not only on its institutional independence but on its social representativeness, expressed in the requirement that the Judicial Service Commission consider the need for the judiciary to reflect broadly the racial and gender composition of South Africa, raises questions about judicial legitimacy that are directly relevant to Bangladesh's context.

The Indian Supreme Court, which was the most direct model for the Bangladesh constitutional design, has followed an evolutionary path of considerable complexity. The collegium system, developed by the Supreme Court itself through a series of judgments in the 1990s that interpreted the consultation requirement of the appointment provisions to mean a requirement of concurrence with the collegium of senior judges, represents a form of judicial self-appointment that is unusual in the comparative constitutional literature. The collegium system has generated persistent criticism on grounds of both transparency and accountability: the process by which the collegium identifies and evaluates candidates is opaque, there are no formal criteria or evaluation standards, and the absence of democratic participation in the process raises legitimacy questions. The recent push in India for a National Judicial Appointments Commission, declared unconstitutional by the Supreme Court in 2015, and the continuing controversy over this issue, provides directly relevant comparative material for analyzing Bangladesh's own judicial appointment controversies.

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CHAPTER TWO: THE EROSION OF JUDICIAL INDEPENDENCE: FROM CONSTITUTIONAL DESIGN TO POLITICAL REALITY

2.1 The Fourth Amendment and the Original Subversion

The original constitutional vision of a judiciary separate from and independent of the executive was systematically dismantled with extraordinary speed. Less than three years after the Constitution came into force, the Fourth Amendment of January 1975 fundamentally altered the constitutional design of the judiciary in ways that would determine the institutional character of Bangladesh's courts for the next four decades and beyond.

The Fourth Amendment was the constitutional instrument through which Sheikh Mujibur Rahman transformed Bangladesh from a parliamentary democracy into a one-party presidential system under the Bangladesh Krishak Sramik Awami League (BAKSAL). Among its many constitutional consequences, the Fourth Amendment transferred the control of the subordinate judiciary from the Supreme Court to the President, effectively placing the career management of district court judges and magistrates under executive authority. The original Article 116, which had vested the Supreme Court with authority over the posting, promotion, and discipline of persons in the judicial service, was replaced with a provision giving the President this authority, subject only to consultation with the Supreme Court.

The significance of this amendment cannot be overstated. The subordinate judiciary in Bangladesh handles the vast majority of the legal matters that ordinary citizens encounter with the courts: criminal prosecutions, civil disputes, family law cases, land matters, and administrative grievances. If the judges of these courts know that their careers, their postings to desirable or undesirable locations, their promotions, and their prospects for avoiding disciplinary action all depend on the decisions of executive officials whose own interests may be affected by the cases before those courts, the structural conditions for compromised justice are established regardless of the formal guarantees of decisional independence contained in Article 116A. The Fourth Amendment's reconstitution of judicial administrative subordination to the executive was not merely a change in institutional arrangements; it was a transformation in the structural incentives facing every judge in the subordinate judiciary.

The assassination of Sheikh Mujibur Rahman in August 1975 and the subsequent periods of military rule under Ziaur Rahman and Hussain Muhammad Ershad brought additional constitutional amendments that further compromised the constitutional framework for judicial independence. The Fifth Amendment, enacted by a Martial Law Proclamation of 1977 and later given constitutional force, and the Seventh Amendment, which similarly legalized the second period of martial law under Ershad, required the superior courts to uphold acts done during the periods of martial law. This requirement placed the judiciary in the constitutionally untenable position of being required to validate actions that were by definition outside the constitutional order, because martial law is precisely the suspension of constitutional governance. The courts' compliance with these requirements, which amounted to judicial ratification of extra-constitutional rule, established a pattern of judicial deference to political power that would shape constitutional culture for decades.

The Eighth Amendment of 1988, which inserted Islam as the state religion into Article 2A, was also significant for the judiciary's constitutional position. This amendment was not directly concerned with the institutional design of the courts, but it had important implications for the interpretive foundations of constitutional adjudication. By establishing Islam as the state religion while maintaining the secular fundamental rights guarantees of Part III, the Eighth Amendment

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created a constitutional tension that the courts would be required to resolve in cases involving the relationship between religious norms and constitutional rights. The courts' handling of this tension, as we shall examine in detail in Part Seven of this textbook, reveals much about the conditions under which Bangladesh's judiciary has been able to exercise genuinely independent constitutional judgment and the conditions under which it has been unable or unwilling to do so.

2.2 The Sixth, Seventh, and Eighth Amendments: Judicial Complicity and Constitutional Survival

A particularly revealing episode in Bangladesh's judicial constitutional history is the manner in which the Superior Courts navigated the constitutionally impossible demands placed upon them by successive authoritarian governments. The history of this navigation is a story of both institutional courage and institutional capitulation, of moments when the courts resisted political pressure and moments when they accommodated it, of jurisprudential creativity used both to protect constitutional values and to rationalize their violation.

The courts' validation of martial law Proclamations and their suspension of normal constitutional review during periods of military rule represented a form of institutional adaptation that can be understood in several different theoretical frameworks. From a purely positivist perspective, the courts were simply giving effect to the legal framework as it existed, including the martial law framework. From a natural law perspective, they were failing to uphold the constitutional order against its usurpers. From a political perspective, they were making judgments about institutional survival: a court that openly challenged a military government's authority risked destruction, while a court that accommodated military rule while preserving its institutional existence could resume meaningful constitutional adjudication when civilian rule returned.

This institutional survival rationale has been used to justify judicial accommodation of authoritarian rule in many constitutional systems, and it has generated extensive theoretical debate in the transitional justice and constitutional theory literatures. David Dyzenhaus's important work on legal responses to apartheid in South Africa, and on judicial complicity with unjust regimes more generally, provides a theoretical framework for evaluating the Bangladesh judiciary's choices during periods of martial law. Dyzenhaus distinguishes between three responses available to judges under an authoritarian legal order: deference, in which judges simply apply the law as the regime defines it; facilitation, in which judges interpret legal provisions in ways that maximize the regime's power; and fidelity, in which judges interpret legal provisions in ways that preserve the rule of law ideal as far as possible within the constraints imposed by the regime. The Bangladesh courts under martial law periods exhibited elements of all three responses at different times, creating a complex record that resists simple characterization as either judicial heroism or judicial cowardice.

The Fifth Amendment case, decided by the Appellate Division in 2010 and formally called Khondker Delwar Hossain v Bangladesh Italian Marble Works Ltd, represents one of the most significant moments of judicial assertion of constitutional supremacy in Bangladesh's history. The Appellate Division, by a majority, struck down the Fifth Amendment to the Constitution, which had retrospectively validated the martial law regime of 1975-1979, holding that the amendment violated the basic structure of the Constitution and was therefore unconstitutional. This decision was remarkable for several reasons: it asserted that the constitutional amendment power was limited by the basic structure doctrine, it held that the constitution-makers could not authorize through constitutional amendment the extra-constitutional seizure of power that had preceded the amendment, and it established the constitutional illegality of the martial law period

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while saving measures taken under it that had become so embedded in the country's governance structure that their invalidation would have caused enormous practical disruption.

The Fifth Amendment judgment was a significant assertion of constitutional supremacy, but its relationship to the political context in which it was made reveals the complexity of the judiciary's position. The judgment was delivered under an Awami League government that had political reasons to welcome the constitutional invalidation of the Fifth Amendment, which was associated with the military government of Ziaur Rahman, the founder of the Bangladesh Nationalist Party. The timing of the judgment therefore does not prove that the court was acting with genuine independence of the political branches; it is at least equally consistent with the hypothesis that the court was acting in a manner aligned with the interests of the incumbent government. This is not to say that the judgment was wrong, either legally or constitutionally: the Fifth Amendment was indeed constitutionally indefensible. But the political context of the judgment reminds us that the question of judicial independence is not simply a question of whether the courts make the right legal decisions but a question of whether they make those decisions because they are right rather than because they are politically convenient.

2.3 The Hasina Era and the Systematic Degradation of the Judiciary

The period of Sheikh Hasina's governments, particularly from 2009 onward, represents the most sustained and systematic erosion of judicial independence in Bangladesh's constitutional history. The erosion was not accomplished primarily through formal constitutional amendment, though several amendments were consequential. It was accomplished more insidiously through a combination of appointment manipulation, political pressure on individual judges, administrative control of the subordinate judiciary, and the weaponization of judicial processes against political opponents.

The appointment of judges to the Supreme Court during the Awami League governments became, as a matter of political practice if not formal constitutional requirement, subject to loyalty screening by the governing party. Judges perceived as sympathetic to the opposition or insufficiently deferential to the government were not appointed, while judges whose political sympathies aligned with the Awami League were preferred. The result was a transformation in the character of the Supreme Court's Appellate Division and High Court Division that could not be reversed simply by changing the government, because the judges appointed by one political government serve long terms and cannot be removed except through the cumbersome parliamentary process, and because the culture of political deference that partisan appointment practices generate does not disappear immediately when the appointing government loses power.

The consequences of this appointment manipulation were visible in a series of high-stakes constitutional cases in which the Supreme Court ruled in favor of the government. The Fifteenth Amendment case, formally called Anwar Hossain Chowdhury v Bangladesh, decided by the Appellate Division in 2011, was perhaps the most consequential. In that case, the court upheld the constitutionality of the Fifteenth Amendment, which had, among other things, abolished the caretaker government system that had been inserted into the Constitution by the Thirteenth Amendment in 1996. The caretaker government system had been introduced as a response to the legitimate concern that an incumbent government could manipulate elections in its favor, and its abolition by the Fifteenth Amendment removed a significant structural protection for electoral integrity. The Appellate Division's decision to uphold the abolition, in the face of compelling arguments that the caretaker system was necessary to protect the constitutional right to free and fair elections, was widely interpreted as a politically accommodating decision.

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The subsequent judicial history makes this interpretation more than a matter of political opinion. In November 2025, the Appellate Division of the Supreme Court, in the case of Dr. Badiul Alam Majumdar v Abdul Mannan Khan, exercised its power of review to overturn its 2011 Fifteenth Amendment decision. This extraordinary step, the first time in Bangladesh's constitutional history that the Appellate Division had reversed a previous constitutional ruling to reinstate a constitutional amendment it had earlier struck down, was accompanied by language of severe self-criticism. The court in its full judgment, released in March 2026, described the abolition of the caretaker system as the judicial murder of democracy, and observed that the 2011 judgment appeared to have buckled under legislative pressure. This judicial acknowledgment that a previous constitutional judgment had been politically compromised is among the most dramatic episodes in Bangladesh's constitutional history, and it raises profound jurisprudential questions about the nature and limits of judicial authority, the requirements of institutional independence, and the remedies available when judicial independence has been systematically violated.

The case of Chief Justice S.K. Sinha represents another defining episode in the degradation of judicial independence under the Hasina government. Chief Justice Sinha, who had been appointed to the position with the expectation of political reliability, delivered a judgment in 2017 that the government found intolerable: the verdict striking down the Sixteenth Amendment, which had transferred the power to remove Supreme Court judges from the Supreme Judicial Council, a judicial body, to Parliament. The Sixteenth Amendment, as Sinha's judgment explained, had the practical effect of making the tenure of judges dependent on the goodwill of the parliamentary majority, which in Bangladesh's political context meant the governing party. The court's invalidation of this amendment, on the ground that it violated the basic structure of the Constitution by undermining judicial independence, was constitutionally correct and judicially courageous.

The government's response was a campaign of unprecedented pressure against the Chief Justice. Government ministers publicly attacked the judgment and questioned the Chief Justice's integrity. A disciplinary process was initiated through the Supreme Judicial Council, which was under government influence despite its nominal independence. Chief Justice Sinha eventually resigned in circumstances that the government claimed were voluntary but that many legal observers regarded as forced by political pressure, and he subsequently left Bangladesh and applied for political asylum in Australia, publishing a memoir that detailed what he described as systematic government intimidation of the judiciary. The entire episode demonstrated with disturbing clarity that the formal constitutional protections for judicial tenure were insufficient to protect a chief justice from a government determined to remove him.

2.4 The Weaponization of Judicial Process Against Political Opponents

The erosion of judicial independence under authoritarian governments is not only a matter of the courts failing to check the government; it also involves the courts being actively used by the government as instruments of political oppression. This dimension of Bangladesh's judicial constitutional experience, which is distinct from but related to the question of judicial independence in the sense of freedom from executive control, deserves careful examination.

The use of the contempt jurisdiction as a weapon against journalists, activists, and political opponents who criticized the judiciary or the government's handling of judicial processes became significantly more common under the Hasina governments. Contempt proceedings were initiated against individuals for comments that, in any genuine constitutional democracy, would be protected as legitimate criticism of public institutions. The breadth with which the contempt

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power was exercised served simultaneously to protect the government from criticism expressed through commentary on judicial decisions and to create a chilling effect on public discourse about the relationship between the government and the courts.

The digitization of criminal prosecution under the Digital Security Act 2018 and its predecessor, the Information and Communication Technology Act 2006, Section 57, provided the government with additional instruments for using the legal process as a tool of suppression. Journalists, bloggers, activists, and ordinary citizens were prosecuted under these provisions for expressing opinions online that the government found offensive, and the courts, with limited exceptions, did not provide the robust protection of free expression that the fundamental rights provisions of the Constitution required. The failure of the courts to strike down the most repressive provisions of these statutes, or to interpret them in rights-protecting ways in individual cases, reflects both the limitations on judicial independence during this period and the broader institutional pathology of a judiciary that had been systematically shaped to accommodate rather than challenge executive power.

The Special Powers Act 1974, which provides for preventive detention without trial, is another instrument through which judicial process has been used against political opponents throughout Bangladesh's constitutional history. The courts' sporadic and inconsistent application of constitutional habeas corpus review to preventive detention orders, sometimes providing effective protection and sometimes rubber-stamping executive detention decisions, reflects the contested and variable character of judicial independence in Bangladesh's constitutional experience.

CHAPTER THREE: THE MASDAR HOSSAIN JUDGMENT: LANDMARK JURISPRUDENCE AND ITS UNFINISHED LEGACY

3.1 The Historical Background and the Legal Claim

The case that became known as the Masdar Hossain case, formally titled Secretary, Ministry of Finance v. Masdar Hossain, was decided by the Appellate Division of the Bangladesh Supreme Court in 1999. It stands as the most important decision in Bangladesh's judicial constitutional jurisprudence, comparable in its significance to landmark judicial independence decisions in other constitutional systems: the Indian Supreme Court's Kesavananda Bharati judgment on the basic structure doctrine, the American Supreme Court's Marbury v. Madison on judicial review, the South African Constitutional Court's first judgment in Zuma on the requirements of a constitutional state. The judgment both articulated a comprehensive doctrine of judicial independence grounded in the constitutional text and established the normative framework within which all subsequent judicial independence controversies in Bangladesh have been debated.

The immediate origins of the case lay in the persistent grievances of judicial service members regarding the administrative subordination of the judicial service to the executive. Masdar Hossain, who was at the time serving as a district judge, brought a writ petition challenging the constitutional validity of the executive's control over the judicial service, arguing that the subordination of the district courts to the Ministry of Law in matters of postings, promotions, and discipline violated the constitutional requirement of judicial independence established by Articles 22, 94, 109, and 116A.

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The petition raised constitutional questions of fundamental importance that had never been directly addressed by the Supreme Court: whether the directive principle of Article 22, requiring the separation of the judiciary from the executive, generated any enforceable constitutional obligations; whether the subordination of judicial administrative matters to the executive created unconstitutional conditions for the exercise of judicial functions; and whether the Supreme Court itself had constitutional authority over the administration of the subordinate judiciary that the executive had been unconstitutionally usurping.

The journey of the case through the courts took several years and generated significant legal argument and historical documentation about the conditions of service of the Bangladesh judicial service. The petition was eventually resolved in a landmark decision by the Appellate Division that went well beyond the specific relief sought to articulate a comprehensive constitutional doctrine of judicial independence.

3.2 The Doctrine of Judicial Independence as Established by the Masdar Hossain Judgment

The Appellate Division's judgment in the Masdar Hossain case, delivered on December 2, 1999, established the following principal propositions of constitutional law, which together constitute the most authoritative judicial exposition of the requirements of judicial independence under the Bangladesh Constitution.

First, the judgment held that the judicial service is a separate and independent service of the Republic, distinct from the civil executive service and not subject to executive control in its essential judicial functions. The court grounded this holding in the reading of Article 22, Article 94, Article 109, and Article 116A together, arguing that these provisions collectively establish a constitutional scheme of judicial independence that cannot be overridden by executive administrative arrangements.

Second, the judgment held that Article 22's requirement of the separation of the judiciary from the executive is not merely a directive principle that generates no enforceable obligations, but a foundational constitutional requirement that the executive is obligated to implement. This interpretive move, from directive principle to enforceable constitutional obligation, was doctrinally significant because it used the general principle of separation of powers to give operative content to the specific judicial independence provisions of Part VI.

Third, the judgment held that the Supreme Court, by virtue of its superintendence authority under Article 109, has constitutional authority over the administration of the subordinate courts that cannot be usurped by the executive. This authority includes control over the postings, promotions, and discipline of judicial officers in the subordinate courts, which the constitutional scheme of Article 116 had originally vested in the Supreme Court but which the Fourth Amendment had purported to transfer to the executive.

Fourth, the judgment issued twelve specific directions to the government for implementing the constitutional requirement of judicial independence. These directions included the establishment of a separate Judicial Service Commission for the recruitment of judicial officers, the creation of a separate pay scale for the judicial service distinct from the executive service pay scale, the framing of separate service rules for the judicial service, the transfer of administrative control over judicial officers from the executive to the Supreme Court, the establishment of a separate secretariat for the Supreme Court, and the creation of a Judicial Pay Commission to periodically review the compensation of judicial officers.

The jurisprudential foundations of the Masdar Hossain judgment deserve careful examination because they reveal both the strengths and the limitations of the court's approach. The court's

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reliance on the basic structure doctrine to treat judicial independence as an entrenched constitutional principle beyond the reach of constitutional amendment was particularly significant, because it suggested that not only the Fourth Amendment's administrative transfer of control over the subordinate judiciary to the executive but any future constitutional amendment undermining judicial independence would be constitutionally impermissible. This was a bold doctrinal move that situated Bangladesh's constitutional jurisprudence firmly within the mainstream of post-colonial constitutional thinking about the limits of constitutional amendment power.

However, the judgment's treatment of the relationship between Article 116 as amended and the original constitutional design was less satisfactory. The court acknowledged that the Fourth Amendment had formally altered the constitutional text of Article 116 to transfer control of the subordinate judiciary to the President, but held that this alteration was inconsistent with the basic structure of the Constitution and therefore constitutionally ineffective. This holding left important questions unanswered: if the Fourth Amendment was constitutionally invalid to the extent it altered Article 116, what was the constitutional status of executive actions taken in reliance on the amended Article 116 over the preceding quarter century? And more practically, how was the constitutional transition from executive to judicial control of the subordinate judiciary to be implemented when the formal constitutional text still contained the amended version of Article 116?

These questions were not merely theoretical. They generated a decade and a half of non-implementation of the Masdar Hossain judgment's twelve directions, as successive governments found it convenient to treat the directions as aspirational rather than mandatory, and as the courts themselves proved reluctant to enforce the judgment against recalcitrant executive branches. The formal separation of the judiciary from the executive in November 2007, implemented under the caretaker government that governed between the expiry of the BNP's electoral mandate and the subsequent Awami League elections, was the most significant step taken toward implementing the Masdar Hossain directions during this period. But even after formal separation, the twelve directions remained only partially implemented: a separate Judicial Service Commission was established, but control over postings and promotions of subordinate judges remained subject to executive influence through the mechanism of presidential action on the recommendation of the Supreme Court, a formula that in practice left significant discretion with the executive.

3.3 Subsequent Jurisprudence on the Masdar Hossain Principles

The Masdar Hossain judgment established the normative framework for judicial independence in Bangladesh, but the subsequent jurisprudence of the Supreme Court's application and development of that framework has been uneven. Several subsequent cases extended and refined the Masdar Hossain principles; others retreated from them under apparent political pressure; and the question of whether the principles are consistently applied or selectively invoked depending on the political context has been a recurring theme in scholarly commentary on Bangladesh's constitutional jurisprudence.

The Shafique Ahmed case, decided by the High Court Division in 2010, represented an important application of the Masdar Hossain principles to the specific context of executive interference with judicial postings. The court held that the executive's transfer of a district judge without the concurrence of the Supreme Court violated the constitutional requirements established by the Masdar Hossain judgment, and ordered the transfer to be reversed. This

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decision was significant because it demonstrated that the Masdar Hossain principles had practical bite in specific administrative contexts, not merely abstract constitutional significance.

However, the courts' willingness to apply the Masdar Hossain principles was variable and appeared to be influenced by the political context. During periods when the government strongly favored maintaining executive control over the subordinate judiciary for political reasons, the courts were more likely to interpret the Masdar Hossain principles narrowly or to find procedural reasons to avoid deciding cases that would require the court to directly challenge executive practice. This variability in the application of constitutional principles is itself a symptom of the judicial independence problem: a truly independent judiciary would apply constitutional principles consistently regardless of their political inconvenience.

The Sixteenth Amendment case, decided by the Appellate Division in 2017 under Chief Justice Sinha, represented the most direct engagement with the Masdar Hossain principles in the context of formal constitutional amendment. The Sixteenth Amendment had transferred the power to remove Supreme Court judges from the Supreme Judicial Council, a body composed of senior judges, to Parliament, which in Bangladesh's political system effectively meant the governing party. Chief Justice Sinha's judgment, which struck down the Sixteenth Amendment as a violation of the basic structure of the Constitution, explicitly invoked the Masdar Hossain principles as establishing that judicial independence is a non-derogable constitutional requirement. The judgment held that a constitutional amendment that made the tenure of judges directly dependent on the will of the parliamentary majority, which is controlled by the executive in Bangladesh's political system, violated this constitutional requirement in precisely the same way that executive control over judicial postings and promotions violated it: by creating structural conditions in which judges had incentives to decide in favor of those who held power over their futures.

The political response to the Sixteenth Amendment judgment, which culminated in the forced resignation of Chief Justice Sinha, demonstrated both the importance of the principles he had articulated and the fragility of those principles when confronted with a government determined to override them. This episode confirmed what the Masdar Hossain judgment had established in doctrinal terms: that the constitutional requirements of judicial independence cannot be maintained through doctrinal pronouncements alone but require institutional structures and political cultures that sustain the independence of judges against the pressures that political power inevitably brings.

3.4 The High Court Division's Article 116 Ruling of September 2025

The most recent and arguably the most consequential judicial engagement with the Masdar Hossain principles occurred in September 2025, when the High Court Division delivered a landmark judgment striking down executive powers exercised under Article 116 and restoring the Supreme Court's authority over the postings, promotions, and discipline of subordinate judges. This judgment, which was delivered in the immediate aftermath of the July 2024 uprising and the installation of the interim government under Professor Muhammad Yunus, represented a decisive judicial affirmation of the constitutional principles that had been formally established by the Masdar Hossain judgment but never fully implemented.

The September 2025 ruling's significance was both doctrinal and practical. Doctrinally, it confirmed that the Masdar Hossain principles had full constitutional force and that executive control over judicial administration, even where ostensibly authorized by the constitutional text as amended by the Fourth Amendment, was constitutionally invalid. Practically, it directed the

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government to establish a separate judicial secretariat within three months, setting a specific and enforceable timeline for implementing a Masdar Hossain direction that had gone unimplemented for twenty-six years.

The ruling's direct consequence was the promulgation of the Supreme Court Secretariat Ordinance in November 2025, which established for the first time in Bangladesh's constitutional history an autonomous administrative arm for the judiciary with its own budget, personnel management authority, and institutional structure independent of the executive ministries. Chief Justice Syed Refaat Ahmed, who had taken office in September 2024 and had made judicial independence reform the centerpiece of his tenure, described the Supreme Court Secretariat Ordinance as the most decisive institutional breakthrough in the history of Bangladesh's judiciary, and the assessment of most constitutional scholars supports this characterization.

CHAPTER FOUR: THE CONSTITUTIONAL FRAMEWORK FOR FUNDAMENTAL RIGHTS: DESIGN, INTERPRETATION, AND JUDICIAL ENFORCEMENT

4.1 The Structure of Part III: Fundamental Rights and Their Limitations

The fundamental rights provisions of the Bangladesh Constitution, contained in Part III (Articles 26 through 47A), represent the primary textual commitment of the constitutional order to the protection of individual liberty against state power. These provisions, modeled substantially on the Indian Constitution's Part III with significant modifications, establish a catalogue of civil and political rights that the state is obligated to respect and the courts are obligated to enforce. The judicial enforcement of these rights, through the writ jurisdiction of the High Court Division under Article 102, is the most direct and visible expression of the Bangladesh judiciary's constitutional function.

The catalogue of fundamental rights in Part III includes the equality guarantee of Article 27, the prohibition on discrimination of Article 28, the equal opportunity guarantee of Article 29, the rule of law guarantee of Article 31, the right to life and personal liberty of Article 32, the rights relating to arrest and detention of Article 33, the prohibition on forced labor of Article 34, the protection against double jeopardy of Article 35, the right to freedom of movement of Article 36, the freedom of assembly of Article 37, the freedom of association of Article 38, the freedom of thought and conscience of Article 39, the freedom of profession of Article 40, the right to property of Article 42, the protection of home and correspondence of Article 43, and the enforcement provisions of Article 44.

Each of these provisions is subject to limitations defined in the provision itself or in general limitation clauses, and the interpretation of these limitations has been one of the most contested areas of Bangladesh's constitutional jurisprudence. The general pattern of the Bangladesh fundamental rights provisions is to state the right in broad terms and then qualify it with a list of permissible grounds for restriction: national security, public order, public health or morality, friendly relations with foreign states, and so on. The courts have generally interpreted these limitation clauses broadly, allowing significant government restrictions on fundamental rights without requiring the government to demonstrate that the restrictions are narrowly tailored to the legitimate governmental objective asserted or that less rights-restricting alternatives are unavailable. This pattern of deferential interpretation has contributed substantially to the gap between the textual promises of Part III and the lived experience of rights in Bangladesh.

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The most significant limitation on fundamental rights is contained in Article 26, which provides that all existing law inconsistent with the fundamental rights is void to the extent of the inconsistency, but also that the State shall not make any law inconsistent with the fundamental rights. The qualification, which many students of Bangladesh constitutional law overlook, is that Article 26 applies only to laws, defined in the constitutional sense, and not to executive action taken pursuant to laws that are not themselves inconsistent with the fundamental rights. This means that if Parliament enacts a law that grants the executive broad discretionary powers, and the executive then exercises those powers in ways that restrict fundamental rights, the courts must determine whether the original grant of discretion was inconsistent with the fundamental rights rather than directly applying fundamental rights to the executive action itself. This creates a layer of constitutional complexity that the government has frequently exploited to insulate executive action from fundamental rights review.

4.2 The Right to Life and Personal Liberty Under Article 32

Article 32 provides that no person shall be deprived of life or personal liberty save in accordance with law. This provision is the constitutional source of the most fundamental protections against arbitrary state action, and its interpretation by Bangladesh's courts has both reflected and shaped the constitutional culture of rights protection in the country.

The phrase save in accordance with law in Article 32 raises the question of what quality of law is required to satisfy the constitutional standard. The narrowest interpretation, which has unfortunately been influential in Bangladesh's jurisprudence at various times, holds that any law enacted by Parliament satisfies the constitutional requirement, because parliamentary enactment is itself the legal process through which restrictions on liberty are authorized. On this interpretation, the Article 32 guarantee provides no protection against legislative restrictions on liberty at all: Parliament can enact any restriction it pleases, and as long as the restriction is implemented in accordance with the legislatively defined procedure, it is constitutionally valid.

The broader interpretation, which is more consistent with the constitutional purpose of Article 32 and with the approach taken by courts in comparable constitutional systems, holds that the law referred to in Article 32 must meet substantive as well as procedural requirements: it must not be arbitrary, it must bear a reasonable relationship to a legitimate governmental objective, and it must not deprive individuals of liberty in a manner that is disproportionate to the objective pursued. This interpretation, which draws on the idea of substantive due process developed in American constitutional jurisprudence and on the related concepts developed in Indian constitutional law, including the landmark Maneka Gandhi judgment of 1978 which established that the procedure established by law for depriving a person of life or personal liberty must be just, fair, and reasonable, would require courts to scrutinize the substantive content of legislation restricting liberty rather than merely its formal enactment.

Bangladesh's Supreme Court has oscillated between these two approaches in its Article 32 jurisprudence, with the trajectory of decisions reflecting the general pattern of judicial independence and political influence in the constitutional system. During periods of greater judicial independence and constitutional activism, the court has tended toward the broader substantive interpretation, requiring more than mere procedural compliance with statutory requirements before constitutional deprivations of liberty will be sustained. During periods of greater judicial accommodation of executive power, the court has tended toward the narrower procedural interpretation, reviewing executive action primarily for compliance with statutory procedure rather than for substantive justification.

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The most significant application of Article 32 in Bangladesh's constitutional jurisprudence has been in the context of preventive detention under the Special Powers Act 1974. The Act allows detention without trial for an initial period of thirty days, extendable up to six months, on the authority of an executive detention order based on the government's satisfaction that detention is necessary in the interests of national security or public order. The constitutional validity of preventive detention schemes and the adequacy of the judicial remedies available to detainees have been extensively litigated, and the case law reveals the constitutional tension between security considerations and liberty in its most acute form.

The courts have generally upheld the validity of preventive detention in principle, on the ground that Article 33 of the Constitution explicitly permits detention without trial subject to certain procedural safeguards, and that the Special Powers Act satisfies these safeguards. However, in individual cases, the courts have sometimes provided meaningful protection to detainees by examining whether the procedural requirements of the Act have been strictly complied with, whether the grounds for detention are sufficient to justify the deprivation of liberty, and whether the detention has been maintained beyond the periods permitted by law. The inconsistency of this protection, which depends significantly on which judges are assigned to hear individual habeas corpus petitions and on the political context in which the petition is filed, reflects the variable and politically sensitive character of judicial review of executive liberty-restricting action in Bangladesh.

4.3 Freedom of Expression and Its Betrayal: Article 39 and the Digital Security Architecture

The freedom of thought and conscience, and of speech, is guaranteed by Article 39 of the Bangladesh Constitution. Article 39(1) guarantees freedom of thought and conscience, while Article 39(2) guarantees freedom of speech and expression, and freedom of the press, subject to reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense.

The limitation clauses in Article 39(2) are broadly worded, and the courts have interpreted them in ways that have given the government considerable latitude to restrict expression that it finds threatening or embarrassing. The most significant recent development in the constitutional framework for freedom of expression is the elaboration of a statutory framework for restricting digital expression that has effectively operated as a comprehensive system of censorship of critical political and social commentary.

The Information and Communication Technology Act 2006, and in particular its Section 57, which criminalized broadly defined categories of offensive or harmful online expression with imprisonment of up to fourteen years, was used extensively by the Awami League government to prosecute journalists, bloggers, activists, and ordinary citizens for critical commentary about the government and about political and religious matters. The Digital Security Act 2018, which replaced Section 57 with even broader criminal provisions, extended this prosecutorial framework across the full range of digital communications and added new categories of criminalized expression including vaguely defined threats to digital security and the integrity of the public image of the state.

The courts' response to these statutory frameworks, which were challenged on constitutional grounds as violations of Article 39 and related fundamental rights, was substantially inadequate to the scale of the constitutional violation. The High Court Division and Appellate Division did provide some protection to individuals charged under these laws in specific cases, and some

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judicial opinions expressed concern about the breadth of the statutory definitions and the potential for prosecutorial abuse. But the courts did not strike down the statutes as constitutionally invalid on their face, did not establish robust constitutional standards for what categories of expression must be protected against criminal prosecution, and did not provide the systematic protection of free expression that a genuinely independent judiciary enforcing constitutional rights would have provided.

The failure of the courts to adequately protect freedom of expression against the Digital Security Act framework is one of the clearest illustrations of the relationship between judicial independence and the practical effectiveness of constitutional rights guarantees. A judiciary that is institutionally dependent on the goodwill of the executive cannot be expected to deliver robust protection of rights that the executive regards as threatening to its political interests. The Digital Security Act was a tool through which the Awami League government controlled political narrative and suppressed dissent; a judiciary capable of striking down or significantly limiting that tool would have been a judiciary that the government would have moved to undermine. The courts' accommodation of the statutory framework for restricting digital expression was therefore both a symptom and a cause of the broader erosion of constitutional rights during the period of Awami League governments.

The post-2024 period has seen significant reform of the legal framework for digital expression. The Digital Security Act 2018 was repealed and replaced by the Cyber Security Act 2023, though the new Act retained many of the same constitutional problems that had plagued its predecessor. The Constitutional Reform Commission's proposals included recommendations for strengthening the constitutional protection of freedom of expression and repealing provisions that criminalized legitimate political and social commentary. These proposals represent a recognition that the statutory framework for digital expression had been fundamentally incompatible with the constitutional guarantee of freedom of expression, and that genuine constitutional reform requires not merely institutional reform but substantive reform of the laws that restrict rights.

4.4 The Right to Equality and Its Enforcement: Articles 27 Through 29

The equality provisions of the Bangladesh Constitution, Articles 27 through 29, establish the foundational commitment to treating citizens without discrimination and with equal protection of the law. Article 27 provides that all citizens are equal before law and are entitled to equal protection of law. Article 28 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 29 guarantees equality of opportunity in matters of employment or appointment to any office in service of the Republic and prohibits discriminatory requirements based on religion, race, caste, sex, or place of birth.

The constitutional equality provisions have been the site of some of Bangladesh's most significant constitutional jurisprudence, addressing questions including the constitutional validity of quotas and reservations in public employment and education, the rights of religious minorities, the constitutional status of customary personal law systems for different religious communities, and the scope of the prohibition on sex discrimination in relation to laws and practices that treat men and women differently.

The quota system in public employment and education has been a particularly contentious constitutional issue, one that assumed explosive political significance in the months preceding the July 2024 uprising. Bangladesh's public employment system has historically operated with a quota system reserving a significant percentage of government jobs for particular categories of

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citizens: descendants of freedom fighters, women, districts with underrepresentation in public employment, and persons with disabilities. The original constitutional and statutory justification for these quotas was the remediation of historical disadvantage and the promotion of equality of opportunity as a substantive rather than merely formal constitutional value.

The constitutional challenges to the quota system raised complex questions about the relationship between formal equality, which prohibits any classification based on the prohibited grounds, and substantive equality, which may require differential treatment to address historical disadvantage. The Indian constitutional tradition, which Bangladesh has heavily drawn upon, has resolved this tension through constitutional amendments explicitly permitting reservations for backward classes and other disadvantaged groups. Bangladesh's constitutional framework has not made this explicit provision, and the courts have had to navigate the tension between the formal equality guarantees of Articles 27 and 29 and the substantive equality purpose that the quota system was designed to serve through interpretive means.

The student-led protests of July 2024 against the quota system, which began as a demand for reform of the freedom fighter descendant quota and escalated into the mass uprising that overthrew the Hasina government, demonstrate the explosive political dimensions of constitutional equality questions in Bangladesh. The constitutional question of whether the quota system as designed and operated was consistent with the equality guarantees of Part III was only one dimension of a controversy that was also about the political instrumentalization of the quota system by the Awami League government, the perception that the quota had become a mechanism for rewarding political loyalists rather than achieving substantive equality, and the broader frustration with a system of governance that appeared to many young Bangladeshis to offer few opportunities for merit-based advancement independent of political connection.

CHAPTER FIVE: JUDICIAL REVIEW AND CONSTITUTIONAL SUPREMACY IN BANGLADESH

5.1 The Foundations of Judicial Review: Theory and Constitutional Authorization

Judicial review, the power of courts to examine the constitutional validity of legislative and executive action and to invalidate measures found to be inconsistent with the Constitution, is the institutional mechanism through which constitutional supremacy is maintained against the encroachments of ordinary political power. The theoretical foundations of judicial review are contested in constitutional philosophy, but its practical importance to the maintenance of constitutional democracy is well-established across comparative constitutional experience.

The Bangladesh Constitution establishes judicial review in several ways. Most directly, Article 26 provides that any law that is inconsistent with the fundamental rights provisions of Part III is void to the extent of the inconsistency. This provision establishes legislative review in the sense that it makes the validity of legislation conditional on its consistency with constitutional rights. Article 102 provides the procedural mechanism for enforcing this constitutional supremacy through writ petitions to the High Court Division. The combination of Article 26's substantive supremacy and Article 102's procedural mechanism creates the constitutional basis for the judicial review of legislation.

The review of executive action is established by Article 102(2), which empowers the High Court Division to make orders requiring public authorities to do what they are legally required to do, prohibiting them from doing what they are legally prohibited from doing, and declaring actions

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of public authorities that are unauthorized by law to be void. This provision establishes administrative review, the judicial supervision of executive action to ensure its conformity with legal authorization and constitutional requirements.

The theoretical foundations of judicial review in Bangladesh's jurisprudence draw primarily on three sources: the common law tradition of ultra vires review, the fundamental rights enforcement framework of Article 102(1), and the basic structure doctrine. The ultra vires tradition holds that public authorities may only exercise powers that are legally conferred upon them, and that courts may review executive action to determine whether the authority claimed for it exists in law. The fundamental rights framework holds that courts may review both legislative and executive action for consistency with the constitutional rights guarantees of Part III. The basic structure doctrine holds that the courts may review even constitutional amendments for consistency with the foundational principles of the constitutional order.

The development of a robust doctrine of proportionality review, drawing on European constitutional traditions and on the influence of international human rights law, represents one of the most significant recent developments in Bangladesh's judicial review jurisprudence. Proportionality review requires that government action restricting rights or otherwise interfering with protected interests be not merely within the legal authority of the government but proportionate to the legitimate governmental objective asserted: the restriction must be suitable to achieve the objective, it must be necessary in the sense that no less restrictive alternative is available, and the restriction must be proportionate in the strict sense that the benefit to the public interest is not outweighed by the harm to the rights of individuals.

The Constitutional Reform Commission's January 2025 report recommended the explicit incorporation of a proportionality standard into the constitutional framework for limitations on fundamental rights, replacing the existing system of grounds-specific limitations with a general limitation clause that would require any restriction on rights to satisfy proportionality requirements. This proposal reflects the convergence of comparative constitutional practice around proportionality as the dominant framework for constitutional rights adjudication, visible in the jurisprudence of the German Federal Constitutional Court, the South African Constitutional Court, the European Court of Human Rights, and increasingly in the constitutional courts of common law jurisdictions. Incorporating proportionality explicitly into the constitutional text would both strengthen the courts' authority to subject rights restrictions to rigorous review and provide a clear doctrinal framework for that review that reduces the discretion available for politically motivated variation in the standard of review applied.

5.2 The Basic Structure Doctrine in Bangladesh: Development and Application

The basic structure doctrine, which holds that certain foundational principles of a constitution cannot be abrogated even through the formal process of constitutional amendment, is one of the most significant and controversial doctrines in comparative constitutional jurisprudence. Originating in the Indian Supreme Court's landmark Kesavananda Bharati judgment of 1973, the doctrine has been adopted in various forms in a number of constitutional systems, including Bangladesh, and has been the subject of extensive scholarly debate about its theoretical foundations, its proper scope, and its relationship to democratic legitimacy.

The Bangladesh Supreme Court first adopted the basic structure doctrine in the Anwar Hossain Chowdhury case of 1989, which challenged the Eighth Amendment's establishment of six permanent benches of the High Court Division in six cities outside Dhaka. The majority judgment held that the constitutional amendment power was limited by the basic structure of the

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Constitution, meaning that certain foundational features of the constitutional order could not be altered even by a two-thirds parliamentary majority. The specific holding of the case was that the decentralization of the High Court Division through the establishment of permanent benches was an alteration of the basic structure because it affected the unity and singularity of the Supreme Court that was a foundational feature of the constitutional design.

The basic structure doctrine in Bangladesh, as it has developed through subsequent cases, identifies judicial independence, the separation of powers, the rule of law, fundamental rights, democracy, and the sovereignty of the people as among the basic structural features of the Constitution that cannot be abrogated by constitutional amendment. The doctrinal development through cases including the Masdar Hossain judgment, the Fifth Amendment case, and the Sixteenth Amendment judgment has progressively elaborated and refined the content of the basic structure, though significant uncertainties remain about the precise scope and limits of the doctrine.

The theoretical foundations of the basic structure doctrine are contested among constitutional scholars, and the debate is particularly important in the Bangladesh context. The strongest theoretical objection to the doctrine is the anti-majoritarian critique: if the constitution can be amended by a constitutional supermajority, on what basis can an appointed and non-elected court declare that certain amendments are constitutionally impermissible? This objection has been pressed by critics of the doctrine in Bangladesh, India, and other jurisdictions, and it raises genuine questions about the relationship between judicial authority and democratic legitimacy.

Several theoretical responses to this objection have been developed. One response, associated with the constitutional theory of Marbury-style judicial review, holds that the constitution derives its authority from the constituent power of the people, which is a higher form of authority than the ordinary legislative power exercised by Parliament, and that the amendment power exercised by Parliament is subject to the constraints established by the constituent power at the constitutional founding. On this view, the basic structure doctrine is not counter-majoritarian but is rather the enforcement of the original constitutional settlement against attempts to override it by ordinary constitutional majorities.

A second response holds that certain constitutional provisions are foundational in the sense that they constitute the identity of the constitutional order rather than merely defining specific institutional arrangements within it. A constitutional amendment that abolishes judicial independence or fundamental rights would not merely change the constitutional order: it would destroy it and replace it with a different and inferior political order. Courts are legitimately authorized to protect the identity of the constitutional order against such transformative destruction even when the destruction is formally clothed in the language of constitutional amendment.

A third and more recently developed response, associated with the theory of constitutional moments elaborated by Bruce Ackerman and by the scholars who have applied his framework to non-American constitutional systems, holds that the legitimacy of the basic structure doctrine depends on whether the constitutional provisions it protects were established through an appropriately elevated form of democratic deliberation. If the foundational constitutional commitments to judicial independence, fundamental rights, and democracy were established through a moment of exceptional popular mobilization and deliberation, the basic structure doctrine can be understood as the judicial protection of those popular commitments against subsequent attempts by ordinary political majorities to override them.

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5.3 The 2025 Reversal of the Fifteenth Amendment Judgment: Jurisprudential Dimensions

The Appellate Division's November 2025 judgment in Dr. Badiul Alam Majumdar v Abdul Mannan Khan represents the most dramatic and jurisprudentially significant exercise of the court's review power in Bangladesh's constitutional history. The judgment reversed the court's own 2011 decision upholding the abolition of the caretaker government system, reinstated the Thirteenth Amendment's caretaker provisions as part of the constitutional text, and accompanied this legal holding with a scathing critique of the court's own institutional performance under the Hasina government.

The jurisprudential dimensions of the November 2025 judgment require careful analysis because the decision raises fundamental questions about the proper operation of constitutional precedent, the relationship between judicial review and democratic legitimacy, the remedies available when judicial independence has been systematically violated, and the legal authority of the Appellate Division to reverse a previous constitutional ruling.

The power of an apex constitutional court to reverse its own previous decisions is recognized in most constitutional systems, but it is exercised with great caution because predictability and consistency are important values of a legal system and because the authority of judicial decisions as constitutional precedents would be significantly undermined if they could be reversed whenever the court's current membership disagreed with its predecessors. The American Supreme Court has reversed itself on constitutional questions in celebrated cases including Brown v. Board of Education, which overruled Plessy v. Ferguson, and Lawrence v. Texas, which overruled Bowers v. Hardwick. But these reversals were justified on grounds that the original decisions were substantively wrong rather than merely differently decided, and they remain controversial precisely because of the institutional implications of judicial willingness to overturn established constitutional precedent.

The Bangladesh Appellate Division's 2025 reversal of its 2011 caretaker judgment was unusual even in the comparative context of apex court self-reversal because the reversing court explicitly stated that the original decision appeared to have been influenced by political pressure rather than legal reasoning. When a court acknowledges that a previous judgment was politically compromised, it is simultaneously making a very serious charge against the institution it constitutes and providing a very powerful justification for overturning the precedent: if the precedent was the product of judicial submission to political pressure rather than legal judgment, the principle of stare decisis, which applies to legal precedents, does not require deference to it.

The full judgment released in March 2026 used the phrase judicial murder of democracy to describe the abolition of the caretaker system, and observed that the judiciary appeared to have buckled under legislative pressure in upholding the Fifteenth Amendment. This language is remarkable in its candor and raises the question of what mechanisms exist within a constitutional system to acknowledge and correct for systematic judicial subservience to executive power. The November 2025 judgment represents one answer to this question: courts can use the power of self-reversal, justified by the demonstration that the original judgment was politically influenced rather than legally reasoned, to restore constitutional principles that were corrupted by institutional submission to political power.

The legal authority for the reversal was grounded in Article 105 of the Constitution, which gives the Appellate Division the power to review its own decisions. The court held that the circumstances of this case, in which the original decision had been made under conditions of judicial subservience to executive pressure that compromised its legal quality, constituted exceptional circumstances justifying departure from normal principles of stare decisis. This

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holding is jurisprudentially defensible but requires careful qualification: the rule that courts may reverse previous decisions when those decisions were politically compromised must itself be defined in ways that do not license simply reversing any previous decision that the current court finds unconvincing, because such an approach would eliminate constitutional precedent entirely.

CHAPTER SIX: CONSTITUTIONAL APPOINTMENTS, THE SUPREME JUDICIAL COUNCIL, AND THE POLITICS OF JUDICIAL SELECTION

6.1 The Constitutional Design of the Appointment Process and Its Structural Flaws

The manner in which judges are selected is among the most consequential decisions in the design of any constitutional system. The appointment process determines not only the personal qualities of individual judges but the institutional character of the judiciary as a whole: a judiciary selected through genuinely merit-based processes in which political considerations are minimized will differ fundamentally from a judiciary selected primarily on the basis of political loyalty, even if the individual judges in both judiciaries are personally honest and capable. The appointment process shapes the judiciary's culture, its relationship with the political branches, and its capacity to exercise independent constitutional judgment in high-stakes cases.

The Bangladesh Constitution's original provisions on judicial appointment were modest in their institutional design. Article 95 provided simply that the Chief Justice would be appointed by the President, that other judges would be appointed by the President after consultation with the Chief Justice, and that qualifications for appointment could be specified by Parliament. The consultation requirement was borrowed from the Indian constitutional tradition, where it had also proven insufficient to insulate judicial appointments from political manipulation until the Supreme Court's collegium judgments of the 1990s.

The structural flaw in this design was identified very early in Bangladesh's constitutional history but remained unaddressed for decades: the convention that the President acts on the advice of the Prime Minister under Article 48(3) meant that judicial appointments were effectively made by the Prime Minister rather than by the President consulting with the Chief Justice. The consultation with the Chief Justice became a formal exercise that did not constrain the Prime Minister's discretion in any meaningful way, because the convention of ministerial advice to the President made the President's formal role essentially ceremonial.

The political consequences of this structural flaw were precisely those that constitutional theory predicts: successive governments appointed judges who were perceived as sympathetic to the governing party's interests, and the composition of the Supreme Court reflected the political history of Bangladesh's governments rather than an independent merit-based selection. The pattern of appointment was so consistently politically driven that it became conventional political wisdom in Bangladesh that the composition of the Supreme Court, particularly the Appellate Division, would determine the outcome of constitutionally significant cases regardless of the legal merits.

6.2 The Supreme Judicial Council: Design, History, and the Sixteenth Amendment Controversy

The Supreme Judicial Council, established by Article 96 of the Constitution before its amendment by the Sixteenth Amendment, was the constitutional body responsible for investigating allegations of misbehavior or incapacity against Supreme Court judges and making

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recommendations to the President regarding their removal. The Council consisted of the Chief Justice and the two next most senior judges of the Appellate Division, providing a mechanism for judicial self-policing that was intended to insulate the removal process from direct political control.

The theoretical justification for a judicial body rather than a parliamentary body handling the removal of judges is straightforward: judges who know that their removal is in the hands of their judicial peers, applying judicially defined standards of conduct, have stronger institutional independence than judges whose removal depends on a parliamentary vote that is controlled by the governing party. The Supreme Judicial Council model, which is used in various forms in several South Asian constitutional systems, represents a middle ground between purely judicial control of judicial accountability, which risks inadequate enforcement of judicial standards, and purely parliamentary control, which risks using the removal mechanism as a political weapon.

The Sixteenth Amendment of 2014, enacted by the Awami League government, abolished the Supreme Judicial Council and transferred the removal authority to Parliament. The stated justification for this amendment was the promotion of parliamentary supremacy and democratic accountability of judges. The actual motivation, as the subsequent political history strongly suggests, was to give the governing party, which controlled Parliament with a substantial majority, direct control over the tenure of Supreme Court judges. The Awami League had found the Supreme Judicial Council an obstacle to removing judges it regarded as insufficiently sympathetic, and the Sixteenth Amendment was designed to remove that obstacle.

Chief Justice Sinha's judgment striking down the Sixteenth Amendment in 2017 correctly identified the constitutional defect in this amendment. The transfer of removal authority to Parliament created conditions in which judges would be deterred from deciding against the interests of the governing party by the prospect of parliamentary removal, thereby destroying the structural independence that the Supreme Judicial Council had been designed to protect. The judgment drew on the basic structure doctrine to hold that judicial independence, as one of the foundational principles of the constitutional order, could not be undermined by constitutional amendment even where the amendment formally satisfied the procedural requirements of Article 142.

The political response to the Sixteenth Amendment judgment was itself a vivid demonstration of why judicial independence from executive control is constitutionally essential. The government's campaign against Chief Justice Sinha, including the initiation of Supreme Judicial Council proceedings against him, the public attacks by government ministers, and the conditions that ultimately led to his resignation and departure from the country, illustrated in practice what the judgment had established in theory: that a government that controls judges' careers will use that control to punish judges who decide against its interests.

6.3 The 2025 Judicial Appointment Ordinance: A New Framework for Judge Selection

The Supreme Court Judge Appointment Ordinance of January 2025, promulgated by the interim government in the aftermath of the July 2024 uprising, represented the most ambitious attempt in Bangladesh's constitutional history to insulate the judicial appointment process from political manipulation. The Ordinance replaced the previous system, in which judges were appointed by the President on the advice of the Prime Minister with consultation of the Chief Justice, with a system based on a Supreme Judicial Appointments Council chaired by the Chief Justice and composed of judicial and non-judicial members.

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Under the new framework established by the Ordinance, the Supreme Judicial Appointments Council would identify and evaluate candidates for appointment to both divisions of the Supreme Court, applying defined criteria related to legal competence, professional reputation, and personal integrity. The Council's recommendations would be submitted to the President, who would make appointments based on those recommendations. The framework was designed to shift the effective power of appointment from the Prime Minister to the Council, thereby breaking the structural link between executive political control and judicial appointment that had characterized Bangladesh's judicial system throughout its history.

The theoretical foundations of the Appointments Council framework reflect the influence of comparative constitutional models, particularly the British Judicial Appointments Commission, the South African Judicial Service Commission, and similar bodies established in other Commonwealth jurisdictions in the late twentieth and early twenty-first centuries. The common rationale for these bodies is that judicial appointment is too important to constitutional integrity to be left entirely in the hands of the executive, but that purely judicial self-appointment through a collegium or similar mechanism raises its own concerns about transparency, accountability, and diversity. A mixed commission including judges, legal practitioners, academics, and lay members, operating under defined criteria and with some degree of public accountability, represents an attempt to balance these competing considerations.

The constitutional controversies surrounding the 2025 Appointments Ordinance illustrate the political stakes of judicial appointment reform with particular clarity. The Law Ministry objected that the Ordinance reduced the government's representation in the appointment process, which was precisely its point: the constitutional problem with the existing appointment system was that the government's informal control was too great rather than too small. The Ministry also objected that the Ordinance reduced the President's formal authority, though under the existing convention the President's appointment authority was exercised on the binding advice of the Prime Minister anyway, making the formal authority of the President a mask for the substantive authority of the Prime Minister.

The new BNP government's early moves in April 2026 to annul or significantly modify the 2025 Appointments Ordinance represent a deeply troubling development in Bangladesh's constitutional reform process. If the BNP, which won a large parliamentary majority in the February 2026 elections, uses that majority to restore the previous system of executive-dominated judicial appointment, the practical consequence will be to replace one party's control over the judiciary with another's without achieving the constitutional transformation that the July 2024 uprising demanded. A system of judicial appointment that is merely controlled by a different party rather than genuinely insulated from partisan politics will not deliver the independent judiciary that constitutional democracy requires.

This concern has been articulated forcefully by constitutional scholars, civil society organizations, and senior lawyers in the weeks following the BNP's electoral victory. The key analytical question is whether the BNP's interest in having its own appointments to the judiciary is strong enough to override its ostensible commitment to constitutional reform, or whether the institutional pressures created by the July Charter's referendum mandate and the expectations of the Bangladeshi public that genuine reform will follow the uprising will compel the BNP to accept constraints on its appointment power that its own short-term political interests would not otherwise require it to accept.

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CHAPTER SEVEN: THE STRUCTURE OF THE SUBORDINATE JUDICIARY AND ITS CONSTITUTIONAL SIGNIFICANCE

7.1 The Constitutional Framework for the Subordinate Courts

The Bangladesh Constitution addresses the subordinate courts in Articles 114 through 116A. Article 114 provides that Parliament may, by law, establish courts subordinate to the Supreme Court. Article 115 provides that appointments to judicial offices in the subordinate courts shall be made by the President in accordance with rules made by the President after consultation with the Supreme Court. Article 116 provides that the control, including the power of posting, promotion and the grant of leave, and the discipline, of persons serving in the judicial service shall vest in the President and shall be exercised by him in consultation with the Supreme Court.

These provisions, in their amended form, establish the constitutional framework for the relationship between the executive and the subordinate judiciary that the Masdar Hossain case found constitutionally deficient and the September 2025 High Court Division judgment found unconstitutional. The original Article 116, before the Fourth Amendment, had vested this control in the Supreme Court rather than the President, and the restoration of this original design has been a central demand of judicial independence advocates throughout Bangladesh's constitutional history.

The constitutional significance of the subordinate judiciary cannot be overstated. The district courts, metropolitan courts, sessions courts, and the vast network of magistrate's courts across Bangladesh's sixty-four districts handle the overwhelming majority of the country's litigation. For most Bangladeshis, the subordinate judiciary is the only judiciary they will ever encounter. Their experience of the legal system, their assessment of whether they have access to justice and whether the law treats them fairly, is shaped almost entirely by the subordinate courts rather than by the Supreme Court whose constitutional significance receives disproportionate scholarly attention.

The condition of the subordinate judiciary in Bangladesh has been persistently characterized by institutional weaknesses that compromise its capacity to deliver justice: overcrowding of courts, enormous case backlogs running to millions of pending cases, inadequate infrastructure, insufficient numbers of judges relative to population, and the political vulnerability of judicial officers to executive pressure over their postings and promotions. These institutional weaknesses are not disconnected from the constitutional questions of judicial independence: a judiciary whose administrative management is controlled by the executive, and whose judges know that their career advancement depends on administrative decisions made by executive officials who are in turn subject to political direction, is a judiciary in which the structural conditions for politically influenced adjudication are deeply embedded.

7.2 Case Backlog and Access to Justice: Constitutional Dimensions

The massive backlog of pending cases in Bangladesh's courts constitutes a constitutional problem as well as an institutional and administrative one. The constitutional right to access to justice, which can be derived from the combination of the fundamental rights guarantee of Article 44, the rule of law guarantee of Article 31, and the specific rights of persons accused of criminal offenses under Articles 33 through 35, includes not merely the formal right to bring a case before a court but the right to have that case decided within a reasonable time.

The principle that justice delayed is justice denied, expressed in the maxim that has been attributed to William Gladstone and has become a standard element of constitutional rights

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jurisprudence in common law systems, has been given specific constitutional content in international human rights law, particularly in Article 14(3)(c) of the International Covenant on Civil and Political Rights, which guarantees the right to trial without undue delay in criminal cases, and in Article 6(1) of the European Convention on Human Rights, which guarantees the right to a fair hearing within a reasonable time. The Supreme Court of Bangladesh has acknowledged the constitutional dimension of the delay problem in various judgments, but has not developed a comprehensive doctrine of constitutional rights to timely justice that would give individual litigants actionable remedies for unreasonable delays.

The scale of Bangladesh's case backlog has been documented extensively. As of 2024, the subordinate courts were reported to have approximately four million pending cases, a figure that represents years' worth of adjudicative work even at the highest realistic rate of disposal. The constitutional reform agenda has included proposals for addressing this backlog through a combination of increased judicial appointments, alternative dispute resolution mechanisms, case management reforms, and digitization of court processes. The Constitutional Reform Commission's proposals for decentralizing the judiciary through permanent High Court benches in all divisional headquarters would, if implemented, reduce the geographic barriers to access that contribute significantly to case backlog in a country where all High Court judicial review proceedings must currently be filed in Dhaka.

7.3 The Special Tribunal System and Its Constitutional Implications

Bangladesh's judicial system includes a significant number of specialized tribunals established by legislation outside the ordinary court structure: labor tribunals, administrative tribunals, the financial reporting tribunal, the International Crimes Tribunal, the Speedy Trial Tribunal, the Nari O Shishu Nirjatan Daman Tribunal, and others. The constitutional validity and institutional design of these special tribunals raise significant constitutional questions about the separation of powers, the right to an independent and impartial tribunal, and the relationship between specialized adjudication and constitutional due process guarantees.

The most constitutionally controversial of these specialized tribunals is the International Crimes Tribunal, established in 2010 to prosecute individuals alleged to have committed crimes during the Liberation War of 1971. The Tribunal's proceedings have been extensively criticized by international observers, including Amnesty International and Human Rights Watch, on grounds including inadequate procedural protections for defendants, restrictions on the ability of defendants to secure international legal representation, and evidence of improper communication between tribunal judges and the prosecution. The Tribunal's proceedings implicate fundamental constitutional due process rights under Articles 33 through 35, and the adequacy of the protections provided to defendants against whom the Tribunal has exercised its power has been the subject of sustained constitutional criticism.

The constitutional framework for the International Crimes Tribunal raises also the question of the temporal scope of constitutional rights guarantees: can a tribunal established in 2010 lawfully adjudicate conduct alleged to have occurred in 1971 under procedures that do not satisfy the contemporary constitutional standards for fair trial? The government's position, that the special nature of war crimes tribunals justifies modified procedural standards, has been accepted in various forms by international law, but the specific modifications adopted in Bangladesh's International Crimes Tribunal have been criticized as going well beyond what the special nature of international crimes adjudication requires.

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CHAPTER EIGHT: THE CONSTITUTIONAL REFORM COMMISSION'S PROPOSALS FOR JUDICIAL REFORM: ANALYSIS AND EVALUATION

8.1 The January 2025 Report: Principal Judicial Reform Proposals

The Constitutional Reform Commission established by the interim government in October 2024 and chaired by Professor Ali Riaz submitted its report in January 2025. The report contains extensive proposals for reform of Bangladesh's constitutional framework for the judiciary, representing the most comprehensive official proposal for judicial constitutional reform since the founding of the republic. An evaluation of these proposals against the standards established by constitutional theory and comparative constitutional experience is essential for assessing whether the current reform process is likely to deliver the genuine judicial independence that Bangladesh's constitutional democracy requires.

The principal judicial reform proposals in the CRC report include the establishment of a Supreme Judicial Appointments Council to reform the appointment process along the lines later implemented in the January 2025 Appointments Ordinance; the establishment of a separate Supreme Court Secretariat to manage judicial administration with genuine institutional independence from the executive, implemented through the November 2025 Secretariat Ordinance; the decentralization of the High Court Division through the establishment of permanent benches in all divisional headquarters; the strengthening of the Supreme Judicial Council as the mechanism for judicial discipline and removal; and the amendment of Articles 115 and 116 to restore the Supreme Court's original constitutional authority over the subordinate judiciary.

These proposals address the principal structural deficits in Bangladesh's judicial constitutional framework and are broadly consistent with the constitutional reforms that comparative experience suggests are necessary for genuine judicial independence. The proposal to establish permanent High Court benches in all divisions is particularly important from the perspective of access to justice: the current system, which concentrates all High Court proceedings in Dhaka, creates enormous barriers of cost, distance, and time that make meaningful access to constitutional remedies impossible for a large proportion of Bangladesh's population, particularly those in rural areas and those with limited financial resources.

The proposal to strengthen the Supreme Judicial Council as the mechanism for removal of Supreme Court judges is also sound in constitutional terms. The Sixteenth Amendment's abolition of the Council and transfer of removal authority to Parliament was constitutionally indefensible, as Chief Justice Sinha's judgment correctly established, and the restoration of the Council should be accomplished in a form that strengthens its institutional independence and its capacity to investigate allegations of judicial misconduct rigorously and impartially.

8.2 The Debate Over High Court Decentralization

The proposal to establish permanent High Court benches in divisional headquarters has generated significant debate among legal professionals, constitutional scholars, and government officials. The arguments for and against decentralization illuminate the competing constitutional values at stake in judicial institutional design.

The arguments for decentralization are compelling. Bangladesh's eight divisions are geographically dispersed across a country of more than 170 million people, and the concentration of all High Court proceedings in Dhaka imposes enormous burdens of cost and travel on litigants from outlying divisions. The constitutional right to access to justice is effectively illusory for

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many Bangladeshis if exercising that right requires travel to Dhaka, accommodation in the capital, and engagement of a Dhaka-based lawyer, expenditures that are simply beyond the means of the majority of the population. Decentralization of the High Court would bring the court significantly closer to a much larger proportion of the population and would substantially reduce the practical barriers to the exercise of constitutional rights.

The arguments against decentralization are primarily institutional. Critics argue that permanent divisional benches would fragment the development of constitutional jurisprudence, producing inconsistent decisions from different benches that would take years to resolve through appeals to the unified Appellate Division. They argue that maintaining a pool of judges in multiple locations would make it difficult to maintain the quality and consistency of the bench. They argue also that the infrastructure requirements for establishing and maintaining High Court benches across eight divisions would require substantial investment that would divert resources from other judicial needs.

The Eighth Amendment case of 1989, which held that the establishment of permanent High Court benches in six cities outside Dhaka violated the constitutional unity of the Supreme Court, represents a significant doctrinal obstacle to the decentralization proposal. The CRC's proposals require either the overruling of the Eighth Amendment case, through the Appellate Division's reversal of its own previous decision, or a constitutional amendment that explicitly authorizes the establishment of divisional High Court benches in terms that distinguish them from the permanent benches struck down in 1989. Given the November 2025 Appellate Division judgment's willingness to reverse the 2011 caretaker government decision, a reversal of the 1989 Eighth Amendment decision is jurisprudentially possible, but it would require a careful elaboration of why the earlier decision was wrong rather than simply asserting that the current court's view of the matter is different.

8.3 Expanding the Catalogue of Constitutional Rights: The Reform Commission's Proposed New Charter of Rights

One of the most significant proposals in the CRC report is the expansion of the constitutional catalogue of fundamental rights to include socioeconomic rights that are currently treated as non-justiciable directive principles rather than enforceable fundamental rights. The CRC proposes the consolidation of Parts II and III of the Constitution into a unified charter of fundamental rights and freedoms, with the rights in the current Part II, including rights to food, clothing, shelter, education, and healthcare, elevated to the status of justiciable constitutional rights enforceable through the court system.

This proposal represents a major constitutional transformation. Under the current constitutional framework, the socioeconomic rights contained in Part II, including the rights to work, food, clothing, shelter, rest and leisure, and social security, are explicitly described as non-justiciable: they impose obligations on the state to make provision for these rights but do not give individuals or organizations the right to go to court to enforce them. The constitutional status of these provisions is the Bangladesh analogue of the Indian directive principles, which operate as a guide for state policy but do not create individually enforceable rights.

The move from non-justiciable socioeconomic policy directives to enforceable constitutional rights represents a substantial expansion of judicial power and responsibility, and it raises important constitutional design questions about the capacity and the appropriate institutional role of courts in addressing complex socioeconomic claims. The comparative constitutional literature, drawing on the experience of South Africa, Colombia, India, and other systems that have

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developed socioeconomic rights jurisprudence, suggests that courts can play a significant and constructive role in enforcing socioeconomic rights without simply imposing their policy preferences on the democratic branches of government, provided that the constitutional framework is designed to give courts appropriate remedial tools and that courts themselves adopt appropriate institutional modesty in their approach to complex socioeconomic claims.

The South African Constitutional Court's socioeconomic rights jurisprudence, developed in landmark cases including Government of the Republic of South Africa v Grootboom and Minister of Health v Treatment Action Campaign, has demonstrated that constitutional courts can meaningfully enforce socioeconomic rights without simply ordering governments to achieve particular policy outcomes. The court's approach of requiring governments to adopt reasonable measures within available resources to progressively realize socioeconomic rights, while retaining judicial authority to review whether the measures adopted are reasonable, represents a model for socioeconomic rights adjudication that respects the separation of powers while giving meaningful constitutional protection to fundamental human needs.

The CRC's proposal to make socioeconomic rights justiciable in Bangladesh reflects the contemporary international consensus, visible in the constitutions of most countries adopted since 1990, that a constitutional catalogue of rights that omits socioeconomic rights fails to protect the conditions necessary for the meaningful exercise of civil and political rights. The right to participate meaningfully in democratic processes, for example, is not effectively protected by guarantees of formal political rights if individuals lack the education, information access, and freedom from material deprivation necessary to form and express political opinions. The right to equality before the law is not effectively protected if individuals cannot afford legal representation. The constitutional case for including socioeconomic rights as justiciable rather than merely aspirational provisions rests on the insight that civil and political rights and socioeconomic rights are interdependent rather than separate categories of entitlement.

CHAPTER NINE: JUDICIAL INDEPENDENCE IN COMPARATIVE PERSPECTIVE: LESSONS FOR BANGLADESH FROM GLOBAL CONSTITUTIONAL EXPERIENCE

9.1 The Indian Collegium System: Lessons from a Parallel Experience

India's experience with judicial appointment and its consequences for judicial independence offers the most directly relevant comparative material for Bangladesh's constitutional analysis, given the historical proximity of the two constitutional systems and the common institutional heritage that both share from the colonial period and the immediate post-independence era.

The evolution of India's judicial appointment system from the original constitutional framework, which was similar to Bangladesh's in giving the President the power of appointment with mandatory consultation of the Chief Justice, through the collegium judgments of the 1990s to the current situation of Chief Justice-dominated appointment recommendations, represents one of the most distinctive and controversial episodes in comparative constitutional jurisprudence. The Supreme Court of India, through its judgments in the First, Second, and Third Judges Cases decided between 1981 and 1998, progressively interpreted the consultation requirement of Article 124 of the Indian Constitution to require the concurrence of the collegium of the Chief Justice and senior judges rather than merely advisory consultation. This interpretive evolution, achieved through judicial rather than constitutional amendment, created the collegium system in which the judiciary effectively appoints its own members.

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The collegium system has generated persistent criticism on grounds of both transparency and diversity. The process by which the collegium identifies and evaluates candidates is entirely opaque: there are no published criteria, no formal evaluation process, no public disclosure of the names considered, and no mechanism for challenging collegium decisions. The system has been associated with persistent underrepresentation of women, lower castes, and religious minorities in the senior judiciary, because the collegium's informal processes tend to favor candidates from the networks of connection and familiarity that the existing judiciary has established. The National Judicial Appointments Commission (NJAC), established by constitutional amendment in 2014 and struck down by the Supreme Court in 2015 on the ground that it violated the basic structure doctrine by undermining judicial independence, represented the government's attempt to introduce a mixed commission model that would combine judicial and governmental representation in the appointment process.

The Indian experience contains important lessons for Bangladesh's judicial appointment reform. The collegium model's opacity and tendency to perpetuate existing biases provides a cautionary tale for proposals that would vest appointment entirely in the hands of the existing judiciary. The NJAC's failure, struck down by the court as an unconstitutional infringement of judicial independence, illustrates the difficulty of reforming judicial appointment through ordinary constitutional amendment when the court treats its own appointment authority as a basic structural principle of the Constitution. The current Indian situation, in which the collegium system continues to operate despite widespread criticism and despite the government's evident desire to modify it, demonstrates that the design of a legitimate and effective judicial appointment mechanism is among the most difficult challenges in constitutional institutional design.

9.2 South Africa's Post-Apartheid Experience: Building Judicial Independence from Scratch

South Africa's experience of building a constitutional judiciary after the end of apartheid provides important lessons for Bangladesh's current reform effort, despite the obvious differences in the specific historical contexts. The post-apartheid constitutional framework was designed by a constitutional assembly that included all significant political forces, was subject to extensive public participation and debate, and was certified by the Constitutional Court as consistent with the constitutional principles agreed in the interim constitution. This inclusive and deliberative constitutional process produced a constitutional framework for the judiciary that has been widely recognized as among the most sophisticated in the comparative constitutional world.

The South African Constitutional Court's appointment process, which involves the Judicial Service Commission, a diverse body including judges, legal practitioners, politicians, and representatives of civil society, has been examined by constitutional scholars as a model for democratic participation in judicial selection. The JSC holds public hearings at which shortlisted candidates are questioned by commission members and members of the public, creating a degree of transparency and public accountability that is unusual in comparative judicial appointment processes. The hearings have been criticized for sometimes becoming political theatre and for not consistently applying rigorous legal criteria, but they have also been credited with opening up the appointment process to democratic scrutiny in ways that have contributed to the legitimate of constitutional court appointments.

The substantive quality of the South African Constitutional Court's jurisprudence, particularly its socioeconomic rights jurisprudence and its transformative constitutionalism, offers models of constitutional adjudication that are directly relevant to Bangladesh's proposed constitutional

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reforms. The concept of transformative constitutionalism, associated particularly with the work of scholars including Karl Klare and Theunis Roux, holds that the constitution is not merely a mechanism for limiting government but a blueprint for fundamental social transformation, and that the judicial interpretation of the constitution should be oriented toward achieving the transformation that the constitution envisions. This approach has significant implications for how courts should interpret socioeconomic rights, equality guarantees, and other provisions that address structural conditions of disadvantage and exclusion.

9.3 Sri Lanka's Constitutional Crisis and Its Lessons: Warning Signs for Bangladesh

The constitutional crisis in Sri Lanka during the period 2018 to 2022, culminating in the mass uprising that forced President Gotabaya Rajapaksa to flee the country in July 2022, provides a cautionary tale about the conditions under which a constitutional system can collapse under the combined pressures of executive overreach, democratic erosion, and economic mismanagement. The parallels with Bangladesh's own constitutional experience are striking and instructive.

Sri Lanka's constitutional crises were driven by many of the same structural factors that have characterized Bangladesh's constitutional pathology: a powerful executive that was insufficiently constrained by constitutional checks, a legislature dominated by the governing coalition that could not provide meaningful oversight, a judiciary that in significant respects accommodated rather than checked executive overreach, and constitutional amendment processes that were used to extend executive power rather than to strengthen constitutional constraints. The Twentieth Amendment to Sri Lanka's Constitution in 2020, which enhanced presidential powers and reversed constitutional provisions that had attempted to moderate presidential authority, provides a direct parallel to the Bangladesh Fifteenth Amendment that abolished the caretaker government system: both were constitutional amendments that concentrated power in the hands of the incumbent executive at the expense of democratic accountability mechanisms.

The Sri Lankan Supreme Court's performance in the 2022 constitutional crisis, when the court ruled that the president could not dissolve Parliament in the manner he proposed and that certain presidential actions were unconstitutional, demonstrated that constitutional courts can play a significant role in constraining executive overreach even in crisis conditions. But the court's earlier accommodations of executive authority, including its approval of the Twentieth Amendment and its inconsistent application of constitutional rights guarantees during the Rajapaksa period, illustrate the same pattern of variable judicial independence that characterizes Bangladesh's constitutional experience.

The Sri Lankan constitutional crisis also illustrates the economic dimensions of constitutional failure: a state that concentrates executive power and suppresses democratic accountability creates conditions for the economic policy mistakes that result from the elimination of the distributed decision-making and error-correction mechanisms that democratic governance provides. Bangladesh's own experience under the Hasina government, particularly the governance failures in banking sector regulation, public infrastructure, and economic management that became visible after the 2024 uprising, reflects a similar pattern.

9.4 Pakistan's Constitutional Jurisprudence: A Mirror for Bangladesh

Pakistan's constitutional history, characterized by alternating periods of military rule and civilian government, by constitutional amendments that have consistently strengthened executive power at the expense of other institutions, and by a Supreme Court that has at various times shown remarkable constitutional courage and at others capitulated completely to military and civilian

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political pressure, provides another comparative mirror for Bangladesh's constitutional experience.

The Pakistani Supreme Court's validation of military coups through the doctrine of necessity, which it applied in the cases validating General Ayub Khan's coup in 1958, General Yahya Khan's coup in 1969, General Zia ul Haq's coup in 1977, and General Pervez Musharraf's coup in 1999, represents an extreme form of the judicial accommodation of extra-constitutional power that also characterized Bangladesh's courts during its periods of military rule. The doctrine of necessity, which holds that courts may validate unconstitutional acts if they are necessary for the survival or benefit of the state, is intellectually indefensible as a matter of constitutional theory and has been explicitly criticized as such by later Pakistani Supreme Court judgments, most notably by the court under Chief Justice Iftikhar Chaudhry that restored judicial independence after Musharraf's attempt to dismiss the judiciary in 2007.

The judicial independence movement in Pakistan, particularly the lawyers' movement of 2007-2009 that succeeded in restoring Chief Justice Chaudhry to his position after his dismissal by Musharraf, provides an instructive parallel to Bangladesh's own constitutional restoration moment after the July 2024 uprising. In both cases, civil society and professional organizations played a critical role in mobilizing public pressure for the restoration of constitutional norms against executive overreach. The Pakistani lawyers' movement also demonstrates the fragility of constitutional restoration achievements: despite the significant advances in judicial independence achieved through the lawyers' movement, the Pakistani judiciary subsequently again became embroiled in political controversies that raised serious questions about its independence, particularly in relation to cases involving the military and in relation to the treatment of political figures from different parties.

CHAPTER TEN: THE SUPREME COURT SECRETARIAT ORDINANCE 2025 AND THE NEW ARCHITECTURE OF JUDICIAL ADMINISTRATION

10.1 The Content and Constitutional Significance of the Ordinance

The Supreme Court Secretariat Ordinance of November 30, 2025, which established for the first time in Bangladesh's constitutional history an autonomous administrative structure for the judiciary with its own budget, personnel management authority, and institutional framework independent of the executive ministries, represents a landmark in the implementation of the constitutional requirements of judicial independence established by the Masdar Hossain judgment a quarter century earlier.

The Ordinance established the Supreme Court Secretariat as an independent institution under the authority of the Supreme Court, headed by a Secretary with the status equivalent to a senior government secretary. The Secretariat was vested with authority over the management of judicial administration at the apex court level, including personnel management, budget preparation and implementation, and coordination of judicial governance. Most significantly, the Ordinance granted the Chief Justice authority to approve expenditures within the allocations passed by Parliament and to approve development and non-development projects for the judiciary up to Taka one billion without prior approval from executive bodies such as the ECNEC or the Finance Division.

These provisions implement the Masdar Hossain direction for the establishment of a separate judicial secretariat more than twenty-five years after that direction was issued. The significance

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of the implementation delay itself is worth noting: successive governments, including governments of both the Awami League and the BNP, had avoided implementing the Supreme Court Secretariat direction because the creation of a genuinely independent judicial administration would have reduced executive leverage over the judiciary. The fact that the implementation finally occurred under the interim government established after the July 2024 uprising, rather than under any elected government, suggests that the implementation was possible precisely because the interim government had no partisan interest in maintaining executive control over the judiciary in the way that elected governments with political appointments to protect inevitably do.

The Ordinance's provisions on financial autonomy are constitutionally particularly significant. The judiciary's financial dependence on the executive had been a persistent constraint on its institutional independence: a judiciary that must negotiate its budget with the Finance Ministry and ECNEC, and that must seek executive approval for even routine administrative expenditures, is a judiciary whose institutional autonomy is compromised in the most practical way. The granting of financial autonomy, while still subject to overall parliamentary appropriation, removes the executive's most direct administrative leverage over the judiciary's operational independence.

10.2 The Inauguration and Early Operation of the Supreme Court Secretariat

The Supreme Court Secretariat was inaugurated on December 11, 2025, in a ceremony attended by Chief Justice Syed Refaat Ahmed, senior justices, and other legal and government officials. The Chief Justice described the Ordinance as the most decisive institutional breakthrough in the history of Bangladesh's judiciary, and observed that for the first time in the constitutional history of the country, the Supreme Court possessed full administrative and financial autonomy.

The Secretariat began operations with nineteen judicial officers and nineteen support staff, a modest beginning for an institution that will eventually need to develop a comprehensive organizational structure, clear operational procedures, and effective coordination mechanisms with the rest of the judicial system. The early operation of the Secretariat revealed both the opportunities and the challenges of institutional independence in practice: while the formal framework for independence was established, the practical implementation required the development of detailed rules, organograms, budget procedures, and coordination mechanisms that the Ordinance had not specified and that the Secretariat's initial staff needed time to develop.

The critical challenge facing the Secretariat in its early operation was that independence requires not merely formal authority but operational capacity: an institution that has the legal authority to manage its own affairs but lacks the institutional knowledge, the administrative expertise, the budget infrastructure, and the personnel to exercise that authority effectively will not achieve the genuine independence that the constitutional framework envisages. Building these capacities requires time, investment, and sustained political will to ensure that the Secretariat receives the resources and the support it needs to develop into a fully effective institution.

10.3 The New BNP Government's Review of the Ordinances: A Critical Constitutional Test

The electoral victory of the Bangladesh Nationalist Party in the February 2026 elections, in which the BNP secured a two-thirds supermajority of parliamentary seats, has created a critical constitutional test for the institutional gains achieved through the Supreme Court Secretariat Ordinance and the Supreme Court Judge Appointment Ordinance. The BNP, as a political party with its own partisan interests in the composition and behavior of the judiciary, has reasons to

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prefer a judicial appointment system over which it has more control than the 2025 Appointments Ordinance provides.

Reports from early April 2026 indicate that a parliamentary committee has recommended the annulment of both the Supreme Court Secretariat Ordinance and the Supreme Court Judge Appointment Ordinance, though with a provision that actions taken under the ordinances would remain valid. This recommendation, if implemented, would represent a significant step backward in Bangladesh's judicial independence reform: it would restore the executive-dominated appointment process for Supreme Court judges and potentially compromise the institutional independence of the Supreme Court Secretariat.

The constitutional stakes of this decision are very high. The 2025 Appointments Ordinance and Secretariat Ordinance were not merely administrative reforms that a new government can modify at will: they were implementations of constitutional requirements established by the Masdar Hossain judgment and confirmed by the High Court Division's September 2025 ruling on Article 116. A parliamentary committee's recommendation to annul these ordinances must be evaluated against the constitutional standard established by these judgments, not merely against the political preferences of the governing party.

The Daily Star editorial of April 2026 identified this issue with appropriate constitutional gravity, observing that when the Supreme Court has declared that an earlier constitutional judgment may have been politically influenced, Parliament cannot honestly say that proper judicial reform is not crucial. The reversal of the judicial appointment and secretariat reforms by the new BNP parliament would be precisely the kind of institutional regression that the July 2024 uprising was directed against, and it would suggest that the political logic of executive control over the judiciary is more powerful than the constitutional logic of judicial independence even in the immediate aftermath of a constitutional revolution.

The provision in the parliamentary committee's recommendation that actions taken under the ordinances would remain valid is an important qualification: it suggests that the immediate practical consequences of annulling the ordinances would be limited, since the appointments made and the institutional arrangements established under them would continue. But the medium-term consequences of restoring executive-dominated appointment processes would be substantial: over time, the judiciary's composition would again reflect the appointing government's partisan preferences rather than genuine merit, and the institutional independence of the judicial administration would be compromised by the restoration of executive leverage.

CHAPTER ELEVEN: THE APPOINTMENT AND REMOVAL OF THE CHIEF JUSTICE: CONSTITUTIONAL CONTROVERSIES AND REFORM PROPOSALS

11.1 The Chief Justice in Bangladesh's Constitutional Framework

The Chief Justice of Bangladesh occupies a position of exceptional constitutional importance. As the head of the Supreme Court, the Chief Justice exercises administrative authority over the entire judicial system, chairs the Supreme Judicial Council when it sits to investigate allegations against Supreme Court judges, presides over cases in the Appellate Division, and is constitutionally designated to perform specified functions in the absence of the President. The personal character, judicial philosophy, and institutional courage of the Chief Justice therefore have enormous consequences for the entire constitutional system.

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The appointment of the Chief Justice has historically been among the most politically sensitive and constitutionally significant decisions made by any Bangladesh government. Under the convention that the President acts on the advice of the Prime Minister, the appointment of the Chief Justice has been effectively made by the Prime Minister, and the choice has consistently reflected political considerations alongside professional ones. The convention, applied in various common law systems, that the Chief Justice is appointed from the most senior available judge of the Appellate Division has sometimes been honored and sometimes departed from, and the departures from seniority convention in Bangladesh have invariably been politically significant: the appointment of a less senior judge as Chief Justice over more senior colleagues signals that the appointing government has found a reason to prefer the less senior judge that is not related to seniority, and that reason is typically political.

The Constitutional Reform Commission's proposal that the Chief Justice be appointed from the Appellate Division's judges, without specifying that seniority must be the decisive criterion, reflects the tension between the convention of seniority and the desire for flexibility in appointment that has characterized the comparative constitutional debate on chief justice appointments in Westminster-tradition systems. The July Charter's incorporation of this proposal as one of the constitutional changes to be implemented if the referendum Yes vote prevails would give constitutional force to what has previously been merely a convention, but without resolving the question of what criteria should govern the choice from among Appellate Division judges when seniority is not automatically determinative.

11.2 The Events of August 2024 and the Crisis of Judicial Leadership

The dramatic events of August 2024, when Chief Justice Obaidul Hassan and five other Appellate Division judges resigned their positions in the immediate aftermath of the fall of the Hasina government, represent one of the most constitutionally extraordinary episodes in Bangladesh's judicial history. The resignations left only one judge in the Appellate Division, creating a practical crisis of judicial leadership at precisely the moment when the constitutional system most needed judicial guidance.

Chief Justice Hassan had been widely regarded as closely aligned with the Awami League government, and the mass uprising that had forced Sheikh Hasina to resign and flee the country was accompanied by protests directed at the Supreme Court as an institution that had failed to protect constitutional rights and had accommodated executive overreach. The protesters who gathered at the Supreme Court complex during this period were expressing the popular view that the judiciary's institutional failures were part of the same systemic problem that had produced the authoritarianism against which the uprising was directed.

The circumstances of the resignations, which were reportedly associated with protest pressure rather than voluntary individual decisions, raised important constitutional questions about the proper relationship between popular pressure and judicial independence. On one hand, judges who respond to popular protests by resigning are not demonstrating judicial independence in any recognizable constitutional sense: if the judiciary's composition can be changed through popular pressure, then the judiciary's independence from political forces including popular political mobilization is compromised. On the other hand, a judiciary whose members are so deeply associated with an authoritarian government that they cannot command public confidence is not providing the constitutional function that an independent judiciary is supposed to provide, and a constitutionally appropriate response to the exposure of systematic judicial subservience to executive power may not be clearly defined by existing constitutional frameworks.

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The August 2024 resignations illustrate the constitutional problem of designing institutional mechanisms to deal with a judiciary that has been systematically politicized. The removal mechanisms established by the Constitution, including the Supreme Judicial Council and the parliamentary address process, are designed to address individual cases of judicial misbehavior rather than the institutional crisis created by systematic judicial accommodation of executive power. When the problem is institutional rather than individual, individual removal mechanisms are insufficient, but mass resignation under popular pressure is constitutionally anomalous.

11.3 Chief Justice Syed Refaat Ahmed and the Judicial Independence Reform Agenda

The appointment of Syed Refaat Ahmed as Chief Justice in September 2024 represented a significant turning point in Bangladesh's judicial constitutional history. Chief Justice Ahmed had served as a judge of the Appellate Division and was known within the legal community as a judge of intellectual independence and constitutional principle. His appointment by the interim government, which was itself operating in an extraordinary constitutional context, was greeted with considerable optimism by those who hoped that judicial independence reform would follow.
Chief Justice Ahmed's tenure has been characterized by an ambitious and systematic program of judicial independence reform. He publicly identified the establishment of the Supreme Court Secretariat as his primary institutional priority, describing the existing dual administration of the judiciary as constitutionally unsound and practically damaging to judicial independence. He commissioned the Judicial Reform Commission to develop comprehensive recommendations for judicial reform. He supported the promulgation of the Supreme Court Secretariat Ordinance and the Supreme Court Judge Appointment Ordinance. He described the Secretariat Ordinance as the most decisive institutional breakthrough, acknowledging that Bangladesh's constitutional vision of judicial independence had for the first time been given genuine institutional expression.
The Chief Justice's approach to judicial reform illustrates the complex relationship between judicial leadership and constitutional change. In formal constitutional terms, the Chief Justice's administrative role and institutional authority give her or him no legislative or amendment power: the constitutional changes needed for genuine judicial independence reform require legislative action, ordinance promulgation by the executive, and ultimately constitutional amendment. But the Chief Justice's institutional authority, public standing, and capacity to articulate the constitutional requirements of judicial independence give the position a normative influence that has been exercised with particular effectiveness by Chief Justice Ahmed.

CHAPTER TWELVE: CONSTITUTIONAL ACCOUNTABILITY OF THE JUDICIARY: BETWEEN INDEPENDENCE AND RESPONSIBILITY

12.1 The Paradox of Judicial Accountability

The independence that constitutional design grants to the judiciary creates what may be called the accountability paradox of judicial power. Courts exercise public power, in the sense that their decisions determine rights, impose obligations, and allocate resources in ways that affect citizens' lives. The exercise of public power must, in any constitutional democracy, be subject to accountability: those who exercise public power on behalf of the community must be answerable for how they exercise it. Yet the very independence that makes judicial power constitutionally valuable, its insulation from political direction and democratic pressure, is also what makes conventional forms of democratic accountability inapplicable to it.

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The resolution of this paradox in constitutional theory and practice involves a distinction between different forms of accountability. Democratic electoral accountability, the form of accountability that applies most directly to elected officials, is constitutionally inappropriate for the judiciary: judges who must periodically seek public approval for their judicial decisions are not independent in any constitutionally meaningful sense. But other forms of accountability, including reasoned justification of judicial decisions, appellate review of trial and intermediate court decisions, oversight by judicial conduct bodies, transparency about financial interests and potential conflicts of interest, and ultimately the removal process for serious misconduct, apply to the judiciary without compromising its essential independence.

The most important form of judicial accountability in constitutional theory is what may be called deliberative accountability: the requirement that courts justify their decisions through reasoned opinions that engage seriously with the arguments made by the parties and that explain the legal basis for the conclusions reached. The practice of giving reasons for judicial decisions, which is universal in common law systems and nearly universal in civil law systems, is not merely a procedural requirement but a fundamental aspect of the rule of law: a decision that is not justified by reasons that the losing party and the general public can evaluate is indistinguishable, in the experience of those affected by it, from an arbitrary exercise of power.

Bangladesh's constitutional framework requires judges to give reasoned decisions, and the practice of reasoned adjudication in Bangladesh's higher courts is generally consistent with this requirement. But the quality of reasoning in constitutional cases, particularly in cases that implicate the political interests of the governing party, has been uneven in the ways that the foregoing analysis of specific constitutional controversies has illustrated. A judiciary that gives technical legal reasons for constitutionally questionable decisions is formally compliant with the requirement of reasoned adjudication but is not providing the substantive accountability that the constitutional system requires.

12.2 The Information Right and Judicial Transparency

A relatively underdeveloped dimension of judicial accountability in Bangladesh's constitutional system is the question of transparency about the judiciary's administrative practices, financial management, and appointment processes. The constitutional right to information, guaranteed by Article 39 and more specifically by the Right to Information Act 2009, applies in principle to public institutions including the judiciary, but the courts have not consistently treated themselves as fully subject to the information transparency requirements that apply to other public bodies.

The establishment of the Supreme Court Secretariat creates important opportunities for improving judicial transparency. A judicial administration with its own institutional identity and budget management authority can develop its own transparency practices, including public disclosure of budget information, appointment criteria and processes, and administrative decisions affecting the subordinate judiciary. The development of these transparency practices is an important complement to institutional independence: a judiciary that is independent of executive control but opaque in its own administrative processes is not fully accountable in the ways that constitutional governance requires.

The Constitutional Reform Commission's proposals include recommendations for improved judicial transparency, including public disclosure of the financial interests of senior judges and publication of the criteria applied in judicial appointments. These proposals reflect the growing international consensus that judicial accountability requires not only independence from political direction but transparency in the exercise of the judiciary's own institutional authority.

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12.3 The Role of the Legal Profession in Maintaining Judicial Independence

The legal profession plays an essential but often underappreciated role in maintaining judicial independence and constitutional integrity. Lawyers are the primary users of the judicial system and are therefore in a position to observe at first hand the conditions under which justice is administered and the degree to which those conditions conform to constitutional requirements. The legal profession's advocacy for judicial independence, visible most dramatically in Pakistan's lawyers' movement of 2007-2009 and in the professional organizations' role in supporting Bangladesh's judicial reform movement after August 2024, is one of the institutional mechanisms through which constitutional norms are maintained against political pressure.

The Bangladesh Bar, and particularly the Supreme Court Bar Association, has been an active participant in the debates surrounding judicial independence reform. Senior lawyers have provided public commentary on judicial appointment controversies, advocated for the implementation of the Masdar Hossain directions, and articulated the constitutional requirements of judicial independence in public discourse. This professional advocacy, while not always effective in the short term, contributes to the constitutional culture of expectations about judicial independence that is essential for maintaining the norms over the long run.

CHAPTER THIRTEEN: THE FUTURE OF JUDICIAL INDEPENDENCE IN BANGLADESH: STRUCTURAL REQUIREMENTS AND POLITICAL CONDITIONS

13.1 What Genuine Judicial Independence Requires: A Structural Analysis

The foregoing analysis of Bangladesh's judicial constitutional history, the reform proposals of the current period, and the comparative constitutional experience of other systems suggests a structural account of what genuine judicial independence requires. This account identifies the necessary conditions for a judiciary that is genuinely capable of fulfilling its constitutional function of enforcing constitutional limits on political power, protecting individual rights, and maintaining the constitutional order against its subversion by those who hold political authority.

The first necessary condition is a genuine merit-based appointment process that is effectively insulated from partisan political control. The experience of Bangladesh's judicial history demonstrates conclusively that a system in which the governing party effectively controls judicial appointments will produce a judiciary whose institutional culture is shaped by accommodationist incentives that compromise its capacity for independent constitutional judgment in high-stakes cases. The 2025 Appointments Ordinance's establishment of the Supreme Judicial Appointments Council represents an important step toward meeting this condition, but the condition will only be met if the Council's operations are transparent, its criteria are clearly defined, its independence from political influence is genuinely protected, and its recommendations are binding on the appointing authority rather than merely advisory.

The second necessary condition is security of judicial tenure combined with effective institutional mechanisms for removing judges who are genuinely guilty of misconduct. The existing constitutional framework provides formal tenure security through the parliamentary address and Supreme Judicial Council removal mechanisms, but the experience of Chief Justice Sinha's forced resignation demonstrates that formal tenure security is insufficient in the face of sustained political pressure by a government willing to use extra-constitutional means. Effective tenure security requires a political culture in which the public and the legal profession recognize that government pressure on judges is constitutionally impermissible and respond to it with the

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kind of public condemnation and professional solidarity that is visible in Pakistan's lawyers' movement.

The third necessary condition is financial autonomy for the judiciary, which is now partially provided by the Supreme Court Secretariat Ordinance's provisions on budget preparation and financial management. The judiciary must have sufficient resources to function effectively, and those resources must not be subject to executive manipulation that can be used to reward compliant judges and penalize independent ones. Financial autonomy also requires adequate compensation for judges at all levels of the judicial hierarchy, because inadequate compensation creates conditions for corruption that are incompatible with judicial independence.

The fourth necessary condition is administrative independence, implemented through the Supreme Court Secretariat and through the restoration of the Supreme Court's original constitutional authority over the postings, promotions, and discipline of the subordinate judiciary under Article 116. The September 2025 High Court ruling and the Secretariat Ordinance have addressed the apex court's administrative independence; the constitutional amendment of Article 116 is needed to complete the restoration of the subordinate judiciary's administrative independence.

The fifth necessary condition is a constitutional culture that values and actively supports judicial independence as a systemic public good rather than merely a professional interest of lawyers and judges. Constitutional cultures are not created by constitutional texts alone: they require sustained commitment from political leaders, legal professionals, civil society organizations, educational institutions, and citizens. Building this culture in Bangladesh, where the political history has established patterns of executive interference with the judiciary that are deeply embedded in political practice and public expectation, is a long-term project that will require sustained effort beyond the immediate constitutional reform agenda.

13.2 The Political Conditions for Constitutional Reform

The constitutional reform process initiated after the July 2024 uprising has created a political moment of unusual opportunity for genuine judicial independence reform in Bangladesh. The combination of a mass uprising that explicitly identified judicial complicity with authoritarianism as a systemic problem, a transitional government with reform as its primary mandate, constitutional reform commissions with genuine mandates to propose structural changes, and a referendum that gave popular approval to a package of constitutional reforms has created more favorable political conditions for meaningful judicial reform than Bangladesh has experienced at any point in its constitutional history.

But political moments of constitutional opportunity are inherently fragile, and the trajectory of the BNP government's early decisions regarding the judicial independence ordinances raises concern that the opportunity may not be fully seized. The test of a constitutional transformation is not the declarations made at the moment of revolutionary change but the institutional choices made as ordinary politics reasserts itself. The BNP, with its large parliamentary majority and its own partisan interests in the judiciary's composition and behavior, faces exactly the same structural incentives to maintain executive control over the judiciary that have driven every previous Bangladesh government to resist genuine judicial independence reform.

The constitutional community of Bangladesh, including the judges, lawyers, scholars, civil society organizations, and engaged citizens who participated in the reform process, must maintain the pressure on the political system to honor the constitutional commitments made in the July Charter and ratified by the February 2026 referendum. The referendum's 61 percent Yes

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vote provides a democratic mandate for the reform package that the new Parliament, including the BNP, is constitutionally bound to implement. Whether this mandate will be honored in its substance, including its implications for judicial independence, or merely acknowledged in its form while its institutional consequences are avoided, is the defining constitutional question of Bangladesh's immediate future.

CHAPTER FOURTEEN: THE THEORY AND PRACTICE OF CONSTITUTIONAL ADJUDICATION IN BANGLADESH

14.1 Constitutional Interpretation: Methods and Approaches

The interpretation of the Bangladesh Constitution by its courts has employed a range of methodological approaches, some more consistently than others, and the choice of interpretive method has often been determinative of constitutional outcomes. Understanding the constitutional interpretation methods used in Bangladesh's courts, and evaluating them against the standards established by constitutional theory and comparative practice, is essential for assessing the quality of Bangladesh's constitutional jurisprudence and for identifying the interpretive approaches that best serve the constitutional purposes the document was designed to achieve.

The textualist approach to constitutional interpretation, which gives primacy to the ordinary meaning of the constitutional text as determined by the words used and their grammatical structure, has been influential in Bangladesh's constitutional jurisprudence, particularly in cases where the text is relatively clear and the interpretive question is whether a specific government action falls within or outside the textual authorization. The strength of the textualist approach is its commitment to the rule of law in the most basic sense: if the text of the Constitution says one thing, the court should give effect to what the text says rather than to what judges think the Constitution should say. The weakness of the textualist approach is its inadequacy in cases where the constitutional text is ambiguous, where it uses broad and general terms whose application to specific circumstances is not obvious, or where the literal meaning of the text would produce results clearly at odds with the constitutional purposes the provision was designed to serve.

The purposive or teleological approach to constitutional interpretation, which gives primacy to the purposes that the constitutional provisions were designed to achieve rather than to the literal meaning of the words used, has been particularly influential in Bangladesh's constitutional jurisprudence on fundamental rights. The argument for purposive interpretation in the fundamental rights context is that rights provisions are intended to protect the fundamental interests of individuals against state power, and an interpretation that focuses on the specific words used rather than the fundamental interests protected would allow the government to avoid constitutional scrutiny by framing its actions in terms that do not technically violate the literal text while effectively undermining the rights the provisions are designed to protect.

The structural approach to constitutional interpretation, which derives interpretive principles from the overall structure and design of the constitutional document rather than from the specific text of individual provisions, has been used most significantly in Bangladesh's jurisprudence through the basic structure doctrine. The argument that certain constitutional provisions reflect foundational structural principles that constrain the entire constitutional order, including the amendment power, is a structural argument in this sense: it holds that the meaning of specific

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constitutional provisions cannot be understood in isolation from the structural logic of the constitutional system as a whole.

The comparative constitutional approach, which draws on the constitutional jurisprudence of other systems to inform the interpretation of domestic constitutional provisions, has been used in Bangladesh's courts with increasing frequency and sophistication. The influence of Indian constitutional jurisprudence has historically been most significant, given the shared constitutional heritage, but Bangladesh's courts have also drawn on English, American, Australian, Canadian, and European constitutional jurisprudence in appropriate cases.

14.2 The Doctrine of Constitutional Harmonization and Its Application

One of the most important interpretive challenges in Bangladesh's constitutional jurisprudence is the harmonization of constitutional provisions that appear to conflict with each other. The Constitution contains numerous such apparent tensions: between the parliamentary sovereignty principle and the constitutional supremacy principle, between the directive principle of secularism and the constitutional provision for Islam as the state religion, between the guarantee of equality and the constitutional authorization of distinctions between citizens, and between the fundamental rights provisions and the limitation clauses that qualify them.

The doctrine of constitutional harmonization holds that apparent conflicts between constitutional provisions should be resolved, where possible, through interpretations of each provision that give effect to both rather than treating the conflict as requiring one provision to override the other entirely. This doctrine reflects the understanding that a constitutional document is a coherent legal instrument rather than a collection of independent provisions, and that its provisions should be interpreted in ways that give effect to the overall constitutional scheme rather than in ways that create internal contradictions.

The application of the harmonization doctrine in Bangladesh's constitutional jurisprudence has been variable. In some cases, courts have used it skillfully to resolve apparent conflicts through creative interpretations that give effect to the constitutional purposes of both provisions. In other cases, courts have resolved apparent conflicts by simply giving priority to one provision over another without engaging seriously with the harmonization exercise. The quality of the court's constitutional reasoning in harmonization cases is one of the most important indicators of the sophistication and independence of its constitutional jurisprudence.

CONCLUDING REFLECTIONS TO PART FOUR

The examination conducted in this fourth part of the textbook has traced the constitutional design of Bangladesh's judiciary from the founding vision of 1972, through five decades of institutional erosion, political manipulation, and attempted reform, to the ambitious but fragile reform program of the current transitional period. The analysis has engaged with the theoretical foundations of judicial independence in constitutional philosophy, the specific constitutional provisions that establish Bangladesh's judicial framework, the landmark jurisprudence of the Masdar Hossain case and its successors, the comparative constitutional experience of systems confronting similar challenges, and the specific institutional reforms of 2025 and 2026 that represent Bangladesh's most determined attempt yet to build the genuinely independent judiciary that its constitutional democracy requires.

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The overarching conclusion of this analysis can be stated directly: Bangladesh's constitutional judiciary has never operated with the degree of institutional independence that the constitutional text promised and that democratic theory requires. The gap between constitutional aspiration and institutional reality in Bangladesh's judicial system is not a minor imperfection in an otherwise well-functioning constitutional order; it is a fundamental structural deficit that has enabled the erosion of constitutional democracy, protected authoritarian governance from legal accountability, and denied to ordinary citizens the constitutional protection to which they are entitled.

The reforms of 2025, particularly the Supreme Court Secretariat Ordinance and the Supreme Court Judge Appointment Ordinance, represent the most significant practical steps toward bridging this gap that Bangladesh has ever taken. These reforms address directly the structural causes of judicial dependence on the executive: the administrative subordination of the judicial system to executive ministries and the political control of judicial appointments through the convention of prime ministerial advice. Their implementation is a necessary condition for genuine judicial independence, though it is not a sufficient condition, because institutional independence can be maintained only if it is supported by a political culture that values and protects it.

The critical test of Bangladesh's current constitutional moment is whether the new BNP government, with its large parliamentary majority and its own partisan interests in the judiciary, will honor the constitutional commitments embodied in the July Charter, implemented in the reform ordinances, and ratified by the February 2026 referendum. The parliamentary committee's recommendation to annul the judicial independence ordinances represents an early and deeply concerning signal that the political logic of executive control over the judiciary may prove stronger than the constitutional logic of judicial independence even in the immediate aftermath of a constitutional revolution.

The constitutional community of Bangladesh must resist this regression with every instrument available to it. The legal arguments for maintaining the judicial independence ordinances are compelling: the constitutional requirements they implement have been established by the Supreme Court, confirmed by judicial rulings, and ratified by popular referendum. The political arguments are also compelling: a Bangladesh that returns to executive-dominated judicial appointments immediately after a revolution against the authoritarianism that such appointments enabled will have confirmed the most cynical interpretation of its constitutional politics. And the systemic arguments are perhaps most compelling of all: the fundamental purpose of the July 2024 uprising was to build a constitutional order that genuinely constrains power rather than merely circulating it between different political elites. A judiciary that is genuinely independent of the government of the day is the most important single institutional requirement for achieving that purpose.

The constitutional theory examined in this part, the comparative experience surveyed, and the specific history of Bangladesh's judicial constitutional life all point to the same conclusion: there is no constitutional democracy without an independent judiciary, and there is no independent judiciary without the structural conditions, the institutional mechanisms, and the political culture that independence requires. Bangladesh has now, for the first time in its history, the structural conditions in place. Whether the institutional mechanisms will be preserved and the political culture developed is the defining constitutional question of the years that lie immediately ahead.

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FURTHER READING AND KEY SOURCES FOR PART FOUR

On the theory of judicial independence, students should consult Hamilton, Alexander, Federalist No. 78 (1788); Montesquieu, The Spirit of the Laws (1748), Book XI; Dworkin, Ronald, Law's Empire (1986); Fuller, Lon, The Morality of Law (1964); Ginsburg, Tom, Judicial Review in New Democracies (2003); and Hirschl, Ran, Towards Juristocracy (2004). For recent comparative constitutional scholarship on judicial independence, see Dixon, Rosalind and Ginsburg, Tom (eds.), Comparative Constitutional Law in Asia (2014); and Huq, Aziz and Ginsburg, Tom, How to Lose a Constitutional Democracy (2018).

On Bangladesh's specific judicial constitutional jurisprudence, students should consult the judgment in Secretary, Ministry of Finance v. Masdar Hossain (2000) 52 DLR (AD) 82; the Anwar Hossain Chowdhury v Bangladesh (1989) judgment on the basic structure doctrine; the Sixteenth Amendment case (2017); the Fifteenth Amendment cases of 2011 and the 2025 reversal in Dr. Badiul Alam Majumdar v Abdul Mannan Khan; and Islam, Mahmudul, Constitutional Law of Bangladesh (4th edition, 2023), which provides the most comprehensive doctrinal analysis of Bangladesh's constitutional jurisprudence.

On the 2025 judicial reform ordinances, students should consult the texts of the Supreme Court Secretariat Ordinance 2025 and the Supreme Court Judge Appointment Ordinance 2025; the analysis in The Business Standard article by Md. Arifujjaman (December 26, 2025) on the new chapter for judicial independence; the Supreme Court Observer analysis by Maitreyi Rajiv (February 20, 2026) on the year of unprecedented constitutional upheaval; the Daily Star editorial of April 2026 on preserving the Supreme Court ordinances for judicial autonomy; and the New Age reporting of April 2026 on the parliamentary committee's recommendation to annul the ordinances.

On comparative judicial independence, students should consult the South African cases of Government of the Republic of South Africa v Grootboom [2001] ZACC 19; Minister of Health v Treatment Action Campaign [2002] ZACC 15; and the Supreme Court of India's collegium judgments in S.P. Gupta v Union of India (1982); Supreme Court Advocates-on-Record Association v Union of India (1993); and In Re Special Reference 1 of 1998 (1999). For Pakistan's judicial independence experience, students should consult Ahmed, Moeen, Constitutional History of Pakistan (2021).

On the July Charter's judicial reform proposals and their implementation, students should consult Haque, Muhammad Ekramul and Bisarya, Sumit, July Charter and Constitutional Reforms in Bangladesh (ConstitutionNet, December 2025); Hossain, Sara, Bangladesh's Referendum and Reforms: The Need to Return to a Constitutional Process (ConstitutionNet, March 4, 2026); and the Constitutional Reform Commission's January 2025 report, available through the Commission's official publications.

On the most recent developments in Bangladesh's judicial reform process as of March-April 2026, students should monitor the Supreme Court Observer's Bangladesh coverage, the ConstitutionNet Bangladesh page, the I.CONnect blog, The Daily Star's judicial coverage, and the New Age and Prothom Alo's reporting on the parliamentary review of the interim government's ordinances.

PART FIVE

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THE FUNDAMENTAL PRINCIPLES OF STATE POLICY, CONSTITUTIONAL IDENTITY, AND THE POLITICS OF FOUNDATIONAL VALUES: NATIONALISM, SOCIALISM, SECULARISM, DEMOCRACY, AND THE RADICAL REFORMATION OF BANGLADESH'S CONSTITUTIONAL SOUL

PREFACE TO PART FIVE

At the very center of every constitutional order lies a set of foundational values that gives the document its moral character and its political identity. These are not merely technical provisions distributing institutional powers or delimiting individual rights, though such provisions are essential to constitutional function. They are the declaratory commitments through which a people announces to itself and to the world what kind of political community it aspires to be, what principles it regards as so fundamental that they deserve constitutional enshrinement, and what vision of justice and social life will orient the interpretation and application of the entire legal order. These foundational values are the constitutional soul of the state, and their content, contestation, and revision constitute one of the most revealing chapters in any nation's constitutional biography.

In Bangladesh, the question of what foundational constitutional values should be, and what specific principles should give them expression, has been one of the most persistently contested and politically explosive dimensions of constitutional life from the very founding of the republic to the present moment. The original four state principles of nationalism, socialism, democracy, and secularism, enshrined in the preamble and Article 8 of the 1972 Constitution, have been challenged, revised, removed, partially restored, and again placed under fundamental reconsideration through a sequence of constitutional amendments and political confrontations that spans the entire history of Bangladesh's constitutional existence. This contestation is not a constitutional curiosity or a peripheral debate about institutional preferences: it reaches into the deepest questions of national identity, religious belonging, social aspiration, and political philosophy that define the relationship of a people to its state.

This fifth part of the textbook undertakes a comprehensive analysis of Bangladesh's foundational constitutional principles, examining their philosophical origins, their jurisprudential character, their contested constitutional history, their relationship to the lived social and political realities of Bangladeshi society, and the radical proposals for their transformation that have emerged in the current constitutional reform process. The analysis is informed by the most recent developments in Bangladesh's constitutional politics, including the Constitutional Reform Commission's January 2025 proposals to replace nationalism, socialism, and secularism with equality, human dignity, social justice, and pluralism; the debates surrounding the July Charter's treatment of these foundational questions; the February 2026 referendum's ambiguous mandate for constitutional transformation; and the ongoing controversy between pluralism and secularism as constitutional frameworks for organizing the relationship between religion and the state in a Muslim-majority society that was founded partly on the principle of religious tolerance.

The analysis draws on the major traditions of constitutional philosophy, political theory, and sociological jurisprudence that illuminate the nature of foundational constitutional values and their relationship to political community. It engages with the influential scholarship of scholars including Joseph Raz on the nature of authority and constitutional identity, Jurgen Habermas on

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constitutional patriotism and post-conventional identity formation, Michael Walzer on the relationship between particular cultural commitments and universal political principles, Charles Taylor on the politics of recognition and the conditions of multicultural constitutionalism, Talal Asad and Saba Mahmood on the anthropology of secularism and its relationship to Muslim societies, and Amartya Sen on the capabilities approach as a foundation for constitutional rights. It also draws extensively on the substantial scholarly literature on constitutional identity and foundational principles in South Asian and Islamic political and legal thought.

CHAPTER ONE: CONSTITUTIONAL IDENTITY AND FOUNDATIONAL PRINCIPLES: THEORY AND PHILOSOPHY

1.1 What Foundational Constitutional Principles Are and Why They Matter

The concept of foundational constitutional principles designates those provisions of a constitutional order that function not merely as specific rules to be applied in particular situations but as the foundational orientations that govern the interpretation and application of all other constitutional provisions and that express the fundamental political identity of the constitutional community. They are what German constitutional theory, following the tradition of the Federal Constitutional Court, has called the Grundentscheidungen of the constitutional order: the basic decisions about the nature of the political community that all other constitutional provisions presuppose and express.

The distinction between foundational constitutional principles and ordinary constitutional rules is not merely a matter of formal hierarchical position within the constitutional text, though formal hierarchy is relevant. It is a matter of the different functions that different constitutional provisions perform. Ordinary constitutional rules settle specific institutional arrangements: how elections shall be conducted, what powers the legislature shall have, how the courts shall be organized. Foundational constitutional principles, by contrast, express the political community's deepest commitments about justice, equality, freedom, and the good life, commitments that must orientate all institutional arrangements without being reducible to any of them.

This distinction has enormous practical consequences for constitutional interpretation. When courts interpret ordinary constitutional provisions, they apply general rules to specific situations using conventional legal reasoning. When courts interpret foundational constitutional principles, they are engaged in a fundamentally different kind of activity: they are articulating the meaning of deeply contested values in the context of specific legal controversies, and the answers they give will express and reinforce a particular understanding of the political community's identity and purpose. Constitutional decisions interpreting foundational principles are never merely legal decisions in the technical sense: they are simultaneously legal, political, philosophical, and cultural decisions that shape the self-understanding of the constitutional community.

The philosophy of foundational constitutional principles has been extensively developed in contemporary constitutional theory. Joseph Raz's influential account of authority and legitimacy argues that political authority is justified when it enables subjects to better conform with reasons that already apply to them independently of authority. On this account, a constitution's foundational principles derive their authority from their capacity to express the genuine moral and political values of the community in a form that can guide institutional action. A constitutional order that imposes foundational principles that do not correspond to the genuine

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values of the community, or that are used instrumentally to serve the political interests of those in power, fails to satisfy the Razian conditions for legitimate authority.

Jurgen Habermas's theory of constitutional patriotism offers a different but complementary framework. Habermas argues that in post-conventional societies characterized by cultural and religious pluralism, constitutional patriotism, the political identification with the universal principles of justice, equality, and human dignity embodied in the constitution, can provide an alternative to ethnic or religious forms of collective identity as the basis for political solidarity. On the Habermasian account, the foundational principles of a constitution should be universal in their aspirations: they should express values that can be endorsed by all reasonable citizens regardless of their particular cultural, religious, or ethnic backgrounds. This framework has direct relevance to the Bangladesh debate about whether secularism or pluralism is the more appropriate foundational constitutional principle for organizing religious diversity.

Charles Taylor's influential account of the politics of recognition argues that meaningful political participation requires not merely formal equality of rights but the recognition of the particular cultural identities and social positions that give individuals their sense of who they are. For Taylor, a constitutional order that is genuinely inclusive must find ways to acknowledge and protect the particular identities of different groups, including religious communities, ethnic minorities, and indigenous peoples, rather than requiring all citizens to conform to a uniform public identity that is supposedly neutral but actually reflects the values of the dominant cultural group. This framework is directly relevant to the Bangladesh debates about the constitutional status of Bangalee versus Bangladeshi identity, the recognition of indigenous peoples, the treatment of religious minorities, and the constitutional implications of Islam as the state religion.

Michael Walzer's communitarian political theory adds another important dimension to the analysis of foundational constitutional principles. Walzer argues against purely universalist approaches to constitutional values, insisting that legitimate political principles must be rooted in the particular historical experience, cultural traditions, and shared understandings of specific political communities rather than derived from abstract universal reason independently of those particulars. This communitarian perspective has important implications for the Bangladesh constitutional debates: it suggests that the foundational principles of the Bangladesh Constitution must reflect the genuine values, aspirations, and historical experience of the Bangladeshi people rather than being imported from foreign constitutional models or imposed by any faction claiming to represent universal values.

1.2 The Social Contract and Founding Moments: Constitutional Identity as Historical Product

The foundational principles of any constitutional order are not chosen in a vacuum of abstract philosophical reflection. They are the product of specific historical moments of constitutional founding, shaped by the political forces, social conditions, intellectual currents, and practical necessities of those moments. Understanding the foundational principles of the Bangladesh Constitution requires understanding the historical moment of its founding: the Liberation War of 1971, the political context of 1972, the intellectual traditions that informed the drafters, and the competing visions of what Bangladesh should be that the constitutional text had to accommodate.

The Liberation War was fought under a complex constellation of motivations, ideals, and political interests. The Bengali nationalist movement that led to independence was animated by a sense of cultural and linguistic identity, the Bengali language and literary tradition, that had been

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systematically suppressed by the Pakistani state. It was also animated by economic grievances, the perception that East Pakistan's resources and labor were exploited for the benefit of West Pakistan's dominant classes. It was animated by democratic demands, the insistence that the overwhelming electoral mandate of the Awami League in the 1970 elections should be honored rather than suppressed. And it was animated by a vision of a more just and egalitarian social order, expressed through the socialist aspirations of a generation shaped by mid-twentieth century progressive politics.

The constitutional founding of 1972 was the moment at which these various motivations and aspirations had to be crystallized into specific constitutional commitments. The Awami League, as the dominant political force, made the primary choices: the four founding principles of nationalism, socialism, democracy, and secularism were the Awami League's ideological platform translated into constitutional language. But this translation raised immediate problems. Nationalism, in the Bengali nationalist tradition, was an assertion of cultural-linguistic identity that distinguished Bangladeshis from their Pakistani oppressors and expressed solidarity with the global community of Bengali speakers. Socialism was an aspiration toward economic justice and the elimination of exploitation, expressed through the vague but powerful language of progressive politics. Democracy was the fundamental commitment to popular sovereignty and representative government that had been the immediate political demand of the liberation movement. And secularism was the commitment to a polity in which religion would not be used as an instrument of political domination, a commitment directly informed by the experience of Pakistani political Islam that had been used to justify the denial of Bengali rights.

Each of these principles was genuine in the sense that it expressed real political aspirations of significant portions of the Bangladeshi people. But each was also contested in important ways that the constitutional text could not fully resolve. The nationalism principle immediately raised the question of how Bangladeshis of non-Bengali ethnicity would relate to a constitutional nationalism defined primarily in Bengali cultural terms. The socialism principle raised questions about what kind of socialism was envisaged and how it would be compatible with the existing property rights and economic interests of Bangladesh's propertied classes. The democracy principle raised questions about who would be included in the democratic political community and on what terms. And the secularism principle raised questions about what exactly secularism meant in a country whose population was overwhelmingly Muslim, whose liberation movement had drawn on Islamic concepts and solidarity networks, and whose political culture was deeply shaped by religious practices and identities.

These unresolved tensions within the foundational principles of 1972 were not mere constitutional imperfections that careful drafting could have eliminated. They reflected genuine social and political divisions in Bangladeshi society that the constitutional founding could not dissolve by textual fiat. The subsequent constitutional history of Bangladesh, particularly the successive revisions of the foundational principles through constitutional amendments, can be understood as the political system's attempts to resolve or suppress these tensions in ways that served the interests of whoever held power at the relevant moment. Understanding this history requires careful attention to both the philosophical content of the constitutional principles and the political context in which they were revised.

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CHAPTER TWO: NATIONALISM AS CONSTITUTIONAL PRINCIPLE: BANGALEE IDENTITY, BANGLADESHI CITIZENSHIP, AND THE POLITICS OF NATIONAL IDENTITY

2.1 Bengali Nationalism and Its Constitutional Expression

The nationalism inscribed in Article 8 of the original 1972 Constitution was specifically defined as Bengali nationalism in Article 9, which declared that the unity and solidarity of the Bengali nation, which derives its identity by virtue of its language and culture, shall be the basis of Bengali nationalism. This formulation was both a constitutional affirmation of the liberation movement's cultural foundations and an immediate source of constitutional tension, because it defined the nation primarily through Bengali linguistic and cultural identity in a country that included significant populations who identified with other cultural and linguistic traditions.

The philosophical foundations of Bengali nationalism as a constitutional principle draw on a rich tradition of thought about the relationship between cultural identity and political community. The Bengali cultural renaissance of the nineteenth century, associated with figures including Rabindranath Tagore, Michael Madhusudan Datta, Bankim Chandra Chattopadhyay, and a subsequent generation of writers and thinkers who gave Bengali language and literature their distinctive intellectual character, provided an intellectual heritage that the liberation movement drew upon in defining its identity against Pakistani cultural and linguistic suppression. The recognition that language is not merely a tool of communication but a carrier of cultural identity, memory, and world-view, given philosophical elaboration by thinkers including Wilhelm von Humboldt and later Gadamer and Ricoeur, provides a philosophical foundation for the centrality of language in the constitutional definition of Bengali nationalism.

The specific constitutional formula of Article 9, defining nationalism through language and culture, reflected a deliberate choice to ground national identity in cultural rather than ethnic or racial characteristics. This choice had important implications: it was in principle inclusive of all those who identified with Bengali language and culture regardless of their religious background, because the Bengali cultural tradition spans the divide between the Muslim majority and the Hindu minority that is a defining feature of Bangladesh's demographic composition. The liberation movement had explicitly rejected the Pakistani concept of Muslim nationalism in favor of this secular Bengali nationalism, and the constitutional formulation of nationalism was intended to consolidate this rejection.

However, the constitutional formula of Bengali nationalism immediately created difficulties with regard to the significant populations in Bangladesh who do not identify primarily with Bengali cultural and linguistic identity. The indigenous peoples of the Chittagong Hill Tracts, collectively known as Jumma people, speak languages including Chakma, Marma, Tripura, and others that are quite distinct from Bengali. The tea garden workers of Sylhet region are largely of Santali, Munda, and other non-Bengali ethnic backgrounds. Various other communities distributed across the country have distinct cultural and linguistic identities that do not map neatly onto the constitutional definition of Bengali nationalism. The constitutional formula of Article 9 effectively excluded these communities from the national identity defined by the Constitution, creating conditions for the marginalization and suppression of non-Bengali identities that would become one of the most serious human rights problems in Bangladesh's post-independence history.

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2.2 The Ziaur Rahman Revision: From Bangalee to Bangladeshi

The most significant constitutional revision of the nationalism principle occurred in 1977, when the martial law government of Ziaur Rahman amended Article 6(2) to change the citizenship denomination from Bangalee to Bangladeshi. This amendment, which was formalized through the Fifth Amendment that retrospectively legalized the martial law proclamations, replaced the Bengali nationalist formulation of citizenship with a territorial citizenship concept that defined citizens by their belonging to the state of Bangladesh rather than by their participation in Bengali cultural identity.

The political motivations for this amendment were multiple. Ziaur Rahman sought to distinguish the new Bangladesh national identity from the Indian Bengali identity that shared the same language and culture, in order to reinforce the distinct character of the Bangladeshi state as separate from and independent of India. He also sought to create an identity framework that was more inclusive of non-Bengali communities within Bangladesh, particularly the indigenous peoples of the Chittagong Hill Tracts who could not be expected to identify with Bengali nationalism. And he sought to distance the new constitutional order he was creating from the Awami League's founding constitutional framework, replacing what he regarded as an excessively Indian-influenced Bengali nationalism with a distinctively Bangladeshi national identity.

Ziaur Rahman simultaneously introduced the principle of Bangladeshi nationalism in place of Bengali nationalism, and replaced the principle of secularism in Article 8 with the principle of absolute trust and faith in the Almighty Allah. This pairing of changes was not coincidental: it reflected a coherent, if constitutionally controversial, vision of Bangladeshi national identity as grounded in Islamic faith rather than secular Bengali cultural nationalism. The new Bangladeshi nationalism was, in Zia's conceptualization, an identity that distinguished Bangladeshis from Indian Bengalis not through mere territorial accident but through the shared religious identity of a predominantly Muslim population.

The jurisprudential implications of this shift from Bengali to Bangladeshi nationalism were substantial. The original Bengali nationalism was primarily a cultural-linguistic concept that had an implicit secular character, in the sense that participation in Bengali cultural identity was in principle available to persons of any religious background who shared the language and cultural tradition. The new Bangladeshi nationalism, framed in the context of the substitution of religious faith for secularism, was a concept with potential for religious exclusionism: a Bangladeshi nationalism defined partly by Islamic faith would be a nationalism from which the country's Hindu, Buddhist, Christian, and other religious minorities were, at least implicitly, excluded.

This exclusionary potential was not fully realized in formal constitutional terms, because the citizenship provisions of the Constitution continued to apply equally to all citizens regardless of religious background, and the fundamental rights provisions prohibited discrimination on grounds of religion. But the symbolic and political implications of the constitutional shift from secular Bengali nationalism to religiously inflected Bangladeshi nationalism were significant for the country's religious minorities, who experienced the subsequent decades as a period of progressive marginalization and periodic violence despite the formal constitutional protections that nominally applied to them.

2.3 The Fifteenth Amendment Restoration and Its Discontents

The Fifteenth Amendment of 2011, enacted by the Awami League government, restored Bengali nationalism to the Constitution while maintaining Bangladeshi as the citizenship denomination.

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This created an unusual constitutional formula: citizens are formally Bangladeshis, but the constitutional nationalism of which they are supposedly the expression is Bengali. The Fifteenth Amendment also restored secularism and socialism to the foundational principles of Article 8 while retaining Islam as the state religion introduced by the Eighth Amendment. The result was a constitutional text of remarkable internal tension: asserting both secularism and Islam as state religion, both Bengali and Bangladeshi identity, and principles of socialism alongside a market economy that bore little resemblance to any recognizable socialist formation.

The restoration of Bengali nationalism through the Fifteenth Amendment was, from the Awami League's perspective, a return to the authentic constitutional framework of 1972 that had been illegitimately altered by military governments. From the perspective of the BNP and Islamist parties, it was the reimposition of an ideological framework associated with the Awami League's political identity that did not reflect the genuine diversity of political views in Bangladesh. From the perspective of non-Bengali communities, it was the restoration of a constitutional nationalism from which they had been systematically excluded.

The Constitutional Reform Commission's proposal to replace both Bengali nationalism and Bangladeshi nationalism with the new constitutional principles of equality, human dignity, social justice, pluralism, and democracy represents a rejection of the entire framework of constitutional nationalism in favor of a value-based rather than identity-based constitutional foundation. Professor Ali Riaz, the Commission's chair, argued in his February 2025 interview with The Diplomat that the concept of constitutional nationalism had proven more divisive than unifying in Bangladesh's experience, and that replacing it with universal values of equality and dignity would create a more genuinely inclusive constitutional foundation for the diverse population of Bangladesh.

This argument has considerable force but also faces important objections. The strongest objection is that a constitutional order that abandons any identification with the particular historical experience and cultural identity of the people it governs risks losing the sense of historical rootedness and shared narrative that is among the most important sources of constitutional legitimacy and political solidarity. The liberation war experience, and the Bengali cultural nationalism that shaped it, is a real and important part of what it means to be Bangladeshi, and a constitutional order that eliminates all recognition of this experience in favor of abstract universal values may fail to speak to the particular identity of the people it seeks to constitute.

2.4 The Constitutional Status of Indigenous Peoples and Non-Bengali Communities

One of the most serious failures of Bangladesh's constitutional nationalism, in all its successive formulations, has been the treatment of the country's indigenous peoples. The Chittagong Hill Tracts, home to approximately twelve distinct indigenous communities collectively known as the Jumma people, has been a site of systematic constitutional exclusion, land dispossession, armed conflict, and inadequate peace process implementation throughout Bangladesh's history. Understanding the constitutional dimensions of this failure requires examining the relationship between the constitutional nationalism provisions and the specific experience of non-Bengali communities.

The 1997 Chittagong Hill Tracts Peace Accord, signed between the Bangladesh government and the Parbatya Chattagram Jana Samhati Samiti after more than two decades of armed conflict, was intended to provide a constitutional framework for indigenous peoples' rights in the CHT. The Accord established the Hill District Councils and the Regional Council, granted special

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administrative status to the CHT, and recognized the need to protect indigenous peoples' land rights, cultural autonomy, and political representation. However, as detailed analysis in Part Three of this textbook shows, the implementation of the Accord has been deeply inadequate, and the constitutional framework for indigenous rights remains fundamentally underdeveloped.

The Constitution as amended does not contain any provision explicitly recognizing the rights of indigenous peoples as a distinct constitutional category. The ambiguous formulation of Article 23A, added by the Fifteenth Amendment, recognizes the cultures of tribal communities but uses the word tribes rather than indigenous peoples, a terminological choice that the government has defended as reflecting the specific cultural context of Bangladesh but that international indigenous rights advocates have criticized as failing to acknowledge the full scope of indigenous peoples' rights under international law, particularly the UN Declaration on the Rights of Indigenous Peoples adopted in 2007.

The Constitutional Reform Commission's proposal to add a provision to the constitution recognizing that Bangladesh is a pluralistic, multi-nation, multi-religion, multi-language, and multi-cultural country where the coexistence and proper dignity of all communities will be ensured represents a significant step toward constitutional recognition of the country's diversity. But critics have pointed out that a general pluralism provision, however welcome, is insufficient without specific constitutional provisions protecting the land rights, cultural autonomy, and political representation of indigenous peoples in terms that give these rights genuine legal force.

CHAPTER THREE: SOCIALISM AS CONSTITUTIONAL PRINCIPLE: ECONOMIC JUSTICE, DIRECTIVE PRINCIPLES, AND THE GAP BETWEEN ASPIRATION AND REALITY

3.1 The Philosophical Content of Constitutional Socialism

The inclusion of socialism as one of the four foundational principles of the Bangladesh Constitution in 1972 reflected the political aspirations of a generation of leaders and activists shaped by mid-twentieth century progressive thought. The liberation movement had been partly a movement of the poor and dispossessed against the economic exploitation of Pakistani capitalists and the collaborating Bengali bourgeoisie, and the commitment to socialism expressed the aspiration that independence would bring not merely political freedom but economic liberation from exploitation and inequality.

The philosophical foundations of the constitutional socialism provision require careful examination, because the term socialism encompasses an enormous range of political and economic ideas that share little more than a commitment to reducing inequality and subordinating private economic interests to collective social welfare. At one end of the philosophical spectrum, socialism designates a comprehensive theory of social organization in which the means of production are collectively owned and managed, private profit is eliminated, and economic decisions are made democratically by the community of producers. At the other end, socialism designates a political commitment to the welfare state, progressive taxation, social insurance, and regulated capitalism that reduces the most extreme forms of inequality while preserving the fundamental institutions of market economy and private property.

The socialism of the 1972 Bangladesh Constitution was never clearly defined, and this definitional ambiguity was both a practical political convenience and a philosophical weakness. Article 10 provided that a socialist economic system shall be established through the democratic

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process with a view to ensuring the attainment of a just and egalitarian society, but this formulation left entirely open what a socialist economic system in Bangladesh would look like, how it would be established, and how it would be distinguished from the systems that existed in other countries claiming socialist credentials. The directive principles of Part II, which were supposed to give operational content to the socialism principle, set out a range of social and economic objectives including the provision of the basic necessities of life, the elimination of disparities in income and wealth, the equal distribution of economic opportunities, and the prevention of exploitation. But these directives were explicitly designated as non-justiciable, meaning that they imposed no specific legal obligations on the state and could not be enforced through the courts.

The specific economic policies pursued by the Awami League government under Sheikh Mujibur Rahman in the early years of Bangladesh's independence had some socialist characteristics: the nationalization of major industrial enterprises, the creation of state-owned enterprises in key sectors, and rhetoric emphasizing the need to eliminate the dominance of the wealthy few over the economic life of the many. But the nationalization program was implemented in ways that created state enterprises famous for inefficiency, corruption, and political patronage rather than genuine socialist production, and the broader economic policies of the government were more consistent with state capitalism than with any recognizable form of socialism.

The subsequent history of Bangladesh's economy has moved steadily away from the socialist aspirations of the founding principles. The structural adjustment programs of the 1980s and 1990s, implemented under pressure from the international financial institutions, privatized state enterprises, liberalized trade and investment, and generally moved Bangladesh's economic framework toward market capitalism. The garment industry, which became the primary engine of Bangladesh's remarkable economic growth in the 1990s and 2000s, is as thoroughly capitalist as any industry in the developing world. The formal retention of socialism as a constitutional principle during this period of economic liberalization created a gap between constitutional aspiration and economic reality that was not merely a matter of incomplete implementation but of fundamental incompatibility between the constitutional principle and the actual economic system.

3.2 The Ziaur Rahman and Ershad Revisions: From Socialist Revolution to Economic and Social Justice

Ziaur Rahman's Fifth Amendment revised the socialism principle in ways that reduced its ideological content while retaining its rhetorical presence. The amended formulation defined socialism as economic and social justice rather than as a specific economic system, a revision that effectively evacuated the constitutional socialism principle of its specific content and transformed it into a general aspiration toward justice that could be compatible with almost any economic system. This revision reflected Zia's desire to open Bangladesh's economy to private investment, including foreign investment, while maintaining some constitutional connection to the progressive political rhetoric that had shaped the liberation movement.

The revision from socialism as a specific economic system to socialism as economic and social justice is, from a philosophical perspective, a significant constitutional change masquerading as a textual accommodation. The original principle carried, however ambiguously, a commitment to specific forms of economic organization that would constrain market capitalism and redistribute economic power. The revised principle expresses a general moral aspiration that is compatible

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with any form of economic organization that can claim some connection to the values of justice and fairness, including highly inegalitarian market economies that provide some minimum social safety net.

The contemporary relevance of the constitutional socialism principle in Bangladesh is therefore deeply problematic. The actual economic system of Bangladesh is a form of market capitalism characterized by significant private enterprise, extensive integration into global value chains, substantial inequality, and a social safety net that is inadequate by any serious socialist standard. The constitutional principle of socialism, even in its diluted post-Zia formulation, provides no effective constitutional constraint on this economic system and serves primarily as an aspiration that governments can invoke rhetorically without any obligation to pursue policies that would actually advance economic equality or reduce exploitation.

3.3 The CRC Proposal to Eliminate Socialism: Arguments For and Against

The Constitutional Reform Commission's proposal to eliminate socialism as a foundational constitutional principle and replace it with the new principles of equality, human dignity, social justice, and pluralism has generated significant debate. The arguments for elimination are primarily that the current constitutional socialism principle is a constitutional fiction that bears no relationship to Bangladesh's actual economic system, that retaining it creates a gap between constitutional aspiration and reality that undermines constitutional credibility, and that the values of equality and social justice that gave socialism its moral force are better expressed through the proposed new principles, which are substantively richer and more directly operational in constitutional terms.

The arguments against elimination emphasize the historical and symbolic importance of the socialism principle as an expression of the liberation movement's commitment to economic justice, the risk that eliminating it would signal a constitutional abandonment of any commitment to reducing inequality and protecting workers and the poor, and the concern that the new principles of equality and social justice, while philosophically attractive, may lack the specific institutional implications that the socialism principle carried even in its diluted form.

The philosophical debate about constitutional economic principles has been significantly advanced in recent decades by the capabilities approach developed by Amartya Sen and Martha Nussbaum. Sen's development economics, which reframes the goals of development in terms of expanding the real freedoms, capabilities, and choices available to individuals rather than in terms of aggregate income growth, provides a more sophisticated philosophical framework for constitutional economic principles than either the traditional socialist commitment to collective ownership or the neoclassical liberal commitment to market efficiency. A constitutional framework oriented toward capabilities would assess economic policies not by whether they conform to a specific economic ideology but by whether they expand or contract the real opportunities available to all citizens, including the most disadvantaged.

Nussbaum's specification of a list of central human capabilities, including bodily health, bodily integrity, the senses and imagination, emotions, practical reason, affiliation, other species, play, and control over one's political and material environment, provides a philosophical foundation for constitutional rights that bridges the traditional divide between civil and political rights and socioeconomic rights. Constitutional provisions framed in terms of capabilities rather than ideological commitments to socialism or capitalism would require the state to ensure that all citizens have access to the minimum capabilities necessary for a dignified human life, without

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specifying the particular economic arrangements through which those capabilities are to be secured.

The capabilities approach has influenced the Constitutional Reform Commission's proposals in important ways, particularly in the recommendation to make socioeconomic rights justiciable rather than merely aspirational. The proposal to include food, clothing, shelter, education, healthcare, and internet access as enforceable constitutional rights, rather than as non-justiciable directive principles, reflects the capabilities approach's insistence that effective constitutional protection of human dignity requires making the basic material conditions of a good life legally enforceable rather than merely politically aspirational.

CHAPTER FOUR: DEMOCRACY AS CONSTITUTIONAL PRINCIPLE: WHAT KIND OF DEMOCRACY DOES THE CONSTITUTION REQUIRE?

4.1 The Philosophical Content of Constitutional Democracy

Democracy is the one foundational principle of the Bangladesh Constitution that has never been seriously proposed for elimination, and whose moral authority has been consistently invoked by all political forces in Bangladesh, including those whose practice has been most obviously inconsistent with democratic norms. This near-universal rhetorical commitment to democracy, combined with the political history of democratic erosion and authoritarian governance that has characterized much of Bangladesh's constitutional experience, raises the question of what the constitutional principle of democracy actually requires in the specific institutional and social context of Bangladesh.

The philosophical literature on democracy is vast, and the different theories of democracy that have been developed in that literature carry very different implications for constitutional design. The minimalist conception of democracy, associated with Joseph Schumpeter's influential definition of democracy as a method by which elites compete for popular votes, requires only the existence of regular competitive elections as the criterion for democratic classification. On this minimal account, Bangladesh would qualify as a democracy whenever elections are held, regardless of whether those elections are free and fair in any meaningful sense, regardless of whether constitutional rights are effectively protected between elections, and regardless of whether the government that emerges from elections is genuinely accountable to the people who voted for it.

The maximalist conception of democracy, associated with the participatory democracy tradition including theorists such as Carole Pateman and Benjamin Barber, holds that genuine democracy requires extensive popular participation in political life beyond the act of voting, the empowerment of citizens at multiple levels of governance, the reduction of economic inequalities that distort political voice, and the development of civic culture and deliberative capacity. On this account, Bangladesh has never genuinely satisfied the requirements of constitutional democracy, because the conditions of meaningful popular participation in political life, including economic security, education, freedom from political violence, and access to information, have not been adequately provided.

The most influential contemporary philosophical framework for democratic theory is the deliberative democracy tradition associated with Habermas, John Rawls, Amy Gutmann, and Dennis Thompson. Deliberative democracy holds that the legitimacy of democratic decisions depends not merely on their being reached through some procedurally correct voting process but

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on their emerging from a process of genuine public deliberation in which all affected parties have the opportunity to present and respond to reasons for the positions they hold, and in which the force of the better argument, rather than mere majoritarianism or political power, is what ultimately determines outcomes. The Habermasian discourse ethics provides a philosophical foundation for this conception of democracy by specifying the conditions under which communicative action, action oriented toward mutual understanding rather than strategic advantage, can generate genuinely legitimate normative commitments.

The deliberative democracy framework is particularly relevant for evaluating Bangladesh's democratic development for several reasons. It draws attention to the conditions that must be present for democratic deliberation to be genuine: freedom of expression, freedom of association, freedom of the press, access to information, protection from intimidation, and the legal and cultural structures that enable effective political participation. It also draws attention to the structural inequalities that distort democratic deliberation: when some citizens' voices carry far more weight than others because of their economic resources, social connections, or political organization, the deliberative process is systematically distorted even when formal procedural rules are followed. And it draws attention to the institutional requirements of deliberative democracy: the legislatures, constitutional courts, ombudsmen, independent commissions, and public deliberation forums that need to be in place for deliberative democracy to function in practice.

4.2 The Crisis of Democracy Under the Hasina Government: Theoretical Analysis

The deterioration of Bangladesh's democratic practice under the Hasina government, particularly from 2014 onward, provides a real-world illustration of how constitutional democracy can be dismantled through formally legal means without abandoning the rhetoric of democratic legitimacy. The theoretical framework most useful for analyzing this process is what Ginsburg and Huq have called constitutional retrogression or what Steven Levitsky and Lucan Way have analyzed as competitive authoritarianism: a form of political regime in which the formal institutions of democracy are maintained but systematically hollowed out so that they no longer serve their constitutional function of ensuring genuine popular accountability of government.

The specific mechanisms through which democratic retrogression proceeded in Bangladesh under the Hasina government have been documented extensively in the comparative political science literature and in the reports of international human rights organizations. They include the manipulation of electoral rules and processes to prevent genuine competition, the use of state resources and administrative machinery for partisan electoral advantage, the persecution of political opponents through selective prosecution and detention, the capture of supposedly independent institutions including the Election Commission, the judiciary, and the Anti-Corruption Commission, the systematic suppression of civil society organizations critical of the government, and the control of media through ownership and regulatory pressure.

Each of these mechanisms represents a departure from the requirements of constitutional democracy not merely in the minimal procedural sense but in the deliberative sense: they systematically distort the conditions under which citizens can form and express political opinions, organize for political purposes, and hold the government accountable through the democratic process. A constitutional framework that is serious about the principle of democracy must therefore include provisions that address these specific mechanisms of democratic retrogression, not merely formal requirements for regular elections.

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The July Charter's reform proposals are partly addressed to precisely this challenge. The reform of the Election Commission appointment process, the introduction of term limits for the Prime Minister, the reform of Article 70's anti-defection provisions, the strengthening of parliamentary oversight mechanisms, and the reform of the caretaker government system are all designed to address specific mechanisms through which democratic accountability has been systematically undermined. Whether these reforms, if implemented, will be sufficient to prevent future democratic retrogression depends on whether they adequately address the structural incentives that drove the retrogression in the first place.

4.3 Democratic Backsliding Theory and Its Application to Bangladesh

The recent scholarship on democratic backsliding and democratic breakdown has developed increasingly sophisticated theoretical frameworks for understanding the conditions under which democracies deteriorate and the institutional designs that make them more or less resilient. Tom Ginsburg and Aziz Huq's important 2018 work, How to Lose a Constitutional Democracy, identifies three pathways of constitutional retrogression: the degradation of constitutional rights, the degradation of the structural conditions for political contestation, and the degradation of democratic rule of law. They show that these three forms of retrogression are mutually reinforcing and that once they reach a sufficient threshold, democratic breakdown may become irreversible through ordinary democratic means.

Anna Grzymala-Busse's comparative work on state capture and democratic erosion shows that the systematic capture of state institutions by governing parties, transforming them from neutral public institutions into instruments of partisan advantage, is one of the most important mechanisms of democratic retrogression and one of the most difficult to reverse. The capture of the Electoral Commission, the judiciary, the public media, and regulatory bodies by the Awami League government represents precisely this form of institutional capture, and the reform agenda's proposals to de-politicize these institutions through independent appointment processes addresses this mechanism directly.

Yascha Mounk's analysis of populist challenges to liberal democracy in his book The People vs. Democracy provides a framework for understanding the particular form that democratic retrogression took under the Hasina government. Mounk distinguishes between liberal non-democracy, which protects individual rights without democratic accountability, and illiberal democracy, which maintains the formal procedures of democratic choice while dismantling the liberal constitutional constraints on majority power. The Hasina government's trajectory is best understood as a movement toward illiberal democracy: maintaining the formal apparatus of elections while systematically dismantling the constitutional constraints that are necessary for democratic elections to be genuinely free and fair.

The constitutional reform proposals of the current period are partly designed to address the specific form of democratic retrogression that Bangladesh has experienced. The July Charter's reform of constitutional appointment processes, the introduction of the National Constitutional Council, the strengthening of presidential powers as a check on prime ministerial authority, and the bicameral legislature proposal are all institutional design choices that attempt to distribute power more widely and create more effective checks on the governing party's capacity to capture state institutions for partisan advantage.

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CHAPTER FIVE: SECULARISM AS CONSTITUTIONAL PRINCIPLE: PHILOSOPHY, HISTORY, AND THE CONTESTED RELATIONSHIP BETWEEN RELIGION AND THE STATE

5.1 Secularism in Political Philosophy: Multiple Meanings and Their Implications

No concept in Bangladesh's constitutional vocabulary has been more consistently misunderstood, more politically contested, or more philosophically complex than secularism. The term has been used to designate at least three different and not entirely compatible principles in the context of Bangladesh's constitutional debates: the complete separation of religion from the state, on the model of French laicite; the equal treatment of all religions without discrimination, on the model of Indian constitutional secularism; and the insulation of public political reason from religious justification, on the model of Habermasian constitutional patriotism. Each of these principles has different implications for the constitutional design of the relationship between religion and the state, and much of the confusion in Bangladesh's constitutional debates about secularism can be traced to the failure to clearly distinguish which of these principles is at stake.

The French republican tradition of laicite, which is perhaps the most thoroughgoing form of constitutional secularism in the democratic world, holds that religion is a purely private matter that has no legitimate role in public political life. The state is strictly neutral with respect to all religions, provides no special recognition or support to any religious community, and requires public institutions to operate entirely without reference to religious norms or identities. This form of secularism has generated enormous controversy in France itself, particularly in debates about the headscarf in public schools and about the compatibility of Islamic religious practices with French republican citizenship, and it is widely regarded as unsuited to the constitutionalization of religious pluralism in societies with deep and pervasive religious identities.

The Indian constitutional tradition of secularism, as it has been interpreted by the Supreme Court and elaborated in constitutional scholarship, is sometimes described as equal respect for all religions rather than indifference to religion or exclusion of religion from public life. The Indian state supports religious institutions of all communities through tax exemptions, funds for religious education, and other means, and religious law governs personal status matters for different religious communities through separate legal regimes. This form of secularism has also been criticized, both for effectively entrenching communal identities in the legal system and for the paradox that what is called secular governance requires detailed engagement with religious categories in order to treat them equally.

The most sophisticated philosophical framework for thinking about secularism and its alternatives in pluralist democratic societies is the one developed by Charles Taylor in his major work A Secular Age and in his essays on the politics of recognition. Taylor distinguishes between what he calls subtraction theories of secularism, which understand modernity as the progressive subtraction of religious belief from a previously religious social world, and theories that understand secularism as one possible form of organization of the relationship between religious and non-religious frameworks of meaning and value in a pluralist society. Taylor argues that the aspiration toward a purely secular public sphere, in which all political arguments must be expressed in terms that are purely neutral between religious and non-religious conceptions of the good, is both philosophically incoherent and practically impossible in societies where religious frameworks of meaning are pervasive and deeply embedded in public culture.

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Taylor's alternative, developed in Dilemmas and Connections (2011) and related work, is a form of constitutional pluralism that makes space for religious voices in public deliberation while maintaining certain basic commitments to equality, dignity, and individual rights that constrain the terms on which religious and non-religious perspectives can enter democratic debate. On Taylor's account, a genuinely pluralist constitutional order does not require citizens to translate their deepest convictions into secular language before they can participate in democratic deliberation: it requires only that the outcomes of democratic deliberation respect the basic rights of all citizens regardless of their religious beliefs.

This Taylorian framework provides an important philosophical perspective on the Bangladesh Constitutional Reform Commission's proposal to replace secularism with pluralism as the foundational constitutional principle governing the relationship between religion and the state. The CRC chair, Ali Riaz, made precisely a Taylorian argument when he said that pluralism is wider in scope and more encompassing than secularism as practiced in Bangladesh, where secularism had been used primarily as a weapon in political battles rather than as a genuine commitment to the equal treatment and recognition of all religious and non-religious communities.

5.2 The History of Secularism in Bangladesh's Constitutional Framework

The constitutional journey of secularism in Bangladesh is one of the most revealing episodes in the country's entire constitutional history, illustrating with particular clarity how constitutional principles are shaped by political power rather than philosophical consistency.

The original inclusion of secularism in the 1972 Constitution was both a principled commitment and a political statement. It was a principled commitment in the sense that it reflected the genuinely held conviction of many liberation movement leaders, and particularly of Sheikh Mujibur Rahman himself, that Bangladesh should be a state in which religion was not used as an instrument of political domination, a principle that had specific historical resonance given that Pakistani political Islam had been used to justify the denial of Bengali rights. It was a political statement in the sense that it consciously rejected the Islamic nationalism of the Pakistani state and asserted a different conception of political legitimacy for the newly independent Bangladesh.

Article 12 of the original 1972 Constitution gave specific content to the secularism principle, providing that it would be realized through the elimination of communalism in all its forms, the prohibition of the granting by the state of political status in favor of any religion, the prohibition of the abuse of religion for political purposes, and the prohibition of discrimination against or persecution of persons practicing a particular religion. This formulation made clear that the secularism of the Bangladesh Constitution was not atheism or the denial of religion's importance in personal life, but rather a political principle about the proper relationship between religion and state power.

The Constitutional definition of secularism in Article 12 was simultaneously visionary and institutionally underdeveloped. It expressed important principles about the non-establishment of religion and the prohibition of religious discrimination, but it provided no specific institutional mechanisms through which these principles would be enforced, no clear guidance on how religious personal law systems would interact with the constitutional equality guarantees, no specification of what the state's relationship to religious education would be, and no framework for resolving conflicts between religious norms and constitutional rights. This institutional underdevelopment meant that the secularism principle was largely dependent on political

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goodwill for its implementation, and it proved unable to withstand the political pressures that emerged almost immediately after the constitutional founding.

The abolition of the secularism principle by the Fifth Amendment in 1977, under Ziaur Rahman's martial law government, was accomplished not through the formal constitutional amendment process but through a martial law proclamation. The jurisprudential invalidity of this abolition, grounded in the unconstitutionality of the martial law regime itself, was recognized in principle by the Fifth Amendment case of 2010. But the practical consequence was that secularism remained absent from the constitutional text for more than three decades, during which period the political culture and legal framework of Bangladesh developed in directions significantly shaped by the absence of any formal constitutional commitment to the separation of religion and politics.

The re-introduction of Islam as the state religion through the Eighth Amendment in 1988, during the Ershad government, added a formal constitutional endorsement of Islam that directly contradicted the original secularism principle even in the diluted form in which it had been understood in practice. The Eighth Amendment's constitutional elevation of Islam to the status of state religion raised profound questions about the constitutional status of religious minorities and the constitutional implications of having a state religion in a system that claimed to guarantee religious equality. These questions were never satisfactorily resolved by subsequent constitutional amendments or judicial decisions.

The Fifteenth Amendment's restoration of secularism in 2011, while retaining Islam as the state religion, created a constitutional formula of remarkable incoherence: the constitution simultaneously declares secularism as a fundamental principle of state policy, defines secularism as including the prohibition of the granting by the state of political status in favor of any religion, and provides that the state religion of the Republic is Islam. The coexistence of these provisions reflects not a coherent constitutional philosophy but a political compromise between competing demands that cannot be simultaneously satisfied within any consistent constitutional framework.

The Bangladesh Supreme Court's 2016 ruling that the coexistence of the secularism principle and the state religion provision does not violate the constitutional basic structure represents an attempt to legitimate through judicial authority a constitutional contradiction that cannot be resolved by reference to any consistent principle of constitutional interpretation. The court's reasoning, to the extent it can be reconstructed from available sources, treated the state religion provision as primarily symbolic rather than legally operative, arguing that it does not actually grant Islam preferential legal status or deprive members of other religions of their constitutional rights. But this reasoning is constitutionally unsatisfying: a constitutional provision that is treated as having no operative legal consequences is arguably not a constitutional provision in any meaningful sense, and the question of why it should be retained in the constitutional text if it is merely symbolic is one that the court did not answer.

5.3 The CRC Proposal: Pluralism as the Alternative to Contested Secularism

The Constitutional Reform Commission's proposal to replace secularism with pluralism as the foundational constitutional principle for religious freedom and equality draws on arguments that have been developed in the comparative constitutional literature and in the philosophical debates about the relationship between constitutional liberalism and religious diversity.

Ali Riaz's argument that pluralism is more encompassing than secularism as practiced in Bangladesh rests on the following propositions: that the concept of secularism has been too closely associated in Bangladesh's political context with the Awami League's particular political

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identity to serve as a genuinely neutral constitutional principle; that the anthropological critique of secularism associated with scholars including Talal Asad, Saba Mahmood, and Winnifred Fallers Sullivan demonstrates that the concept of secularism cannot be politically neutral in societies shaped by non-Western religious traditions; and that pluralism, understood as the constitutional commitment to equal dignity and equal political participation for persons of all religious and non-religious backgrounds, achieves the substantive goals that secularism was designed to achieve without the ideological baggage that has made secularism a source of constitutional controversy.

The philosophical argument that draws most powerfully on comparative constitutional experience for the replacement of secularism with pluralism is the one associated with the New Constitutionalism scholarship of scholars including Vicki Jackson, Sujit Choudhry, and Aileen Kavanagh. This scholarship argues that the most important function of constitutional provisions governing religion is not the formal declaration of a particular philosophical position on the relationship between religion and politics but the creation of institutional arrangements that protect the equal dignity and political voice of persons of all religious and non-religious backgrounds. On this account, the constitutional question is not whether the constitution should be secular or pluralist in some abstract philosophical sense, but what specific constitutional provisions and institutional arrangements are necessary to ensure that no religious community uses the state's coercive power to impose its norms on others, that religious minorities are protected from discrimination and persecution, that the state does not interfere with genuine freedom of religious practice and belief, and that political decisions are made through processes open to participation by all citizens regardless of their religious commitments.

Talal Asad's groundbreaking work on the anthropology of secularism, particularly his Formations of the Secular (2003), provides a powerful intellectual foundation for the CRC's approach. Asad argues that secularism is not a neutral philosophical position standing outside and above religious particularity but is itself a historically specific and culturally embedded political project that emerged from the particular historical experience of Western Christendom and cannot be assumed to translate straightforwardly to non-Western contexts with different religious traditions. Asad's argument is not that secularism is wrong or that theocracy is desirable, but rather that the specific forms in which the relationship between religion and politics is organized must be worked out in specific historical and cultural contexts rather than derived from a supposedly universal philosophical principle.

Saba Mahmood's work on Islamic revival movements in Egypt, particularly her Politics of Piety (2005), develops a related argument about the political philosophy of gender, religion, and constitutional rights. Mahmood argues that liberal constitutional frameworks that assume the privatization of religion as the baseline condition for political modernity systematically misunderstand the ways in which religious practice is woven into the fabric of everyday life and social identity for millions of Muslims, and that a genuinely pluralist constitutional framework must make space for different modes of religious subjectivity rather than requiring all citizens to conform to a liberal model of the autonomous, self-directing individual who happens to hold certain private religious beliefs.

These philosophical arguments have practical implications for Bangladesh's constitutional design. They suggest that the replacement of secularism with pluralism, if properly understood and implemented, is not a retreat from the constitutional commitment to religious equality but a more sophisticated expression of that commitment: one that acknowledges the pervasive importance of religious identity in Bangladeshi social and political life while insisting on the

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equal dignity of all religious and non-religious communities and the prohibition of the use of state power to impose any religion's norms on those who do not share them.

5.4 The Islam as State Religion Controversy: Constitutional Analysis

The continued retention of Islam as the state religion under the proposed constitutional reforms, despite the elimination of the secularism principle, is among the most constitutionally controversial aspects of the CRC proposals. The NLS Forum analysis by Ridwanul Haque and others has identified the central constitutional problem: eliminating secularism without removing the state religion provision, and replacing secularism with pluralism without clearly specifying what pluralism requires in terms of the state's relationship to religious communities, leaves the constitutional framework for religious freedom fundamentally ambiguous.

The constitutional concept of a state religion, irrespective of its practical legal content, carries inevitable symbolic implications about the relationship between the state and the religious community whose religion is designated as the state religion. In a Muslim-majority state, the designation of Islam as the state religion signals to religious minorities that their belonging to the political community is conditional in a way that the majority's belonging is not: the state has identified itself with the majority religion in a manner that implicitly treats minority religions as less fully integrated into the constitutional identity of the state. This symbolic exclusion is constitutionally significant even if the state religion provision has no direct legal consequences for the rights of religious minorities, because constitutional symbolism shapes political culture and political culture shapes the conditions under which constitutional rights are either effectively protected or inadequately enforced.

The argument that Islam's designation as state religion is compatible with constitutional pluralism rests primarily on the contention that the designation is purely symbolic and has no legal consequences for the rights of citizens of other religions or no religion. This argument was substantially accepted by the Bangladesh Supreme Court's 2016 ruling. But critics have pointed out that treating a constitutional provision as purely symbolic while retaining it in the text of the constitution is a jurisprudentially unstable position: constitutional provisions should have legal content, and a provision with no legal content is arguably not a constitutional provision but merely a piece of constitutional decoration that can be given content by future governments or courts in ways that may not be harmless.

The concern is especially acute given Bangladesh's history of violence against religious minorities and the persistent inadequacy of the state's protection of minority religious communities. If the state religion provision is invoked, even informally, to justify the state's de facto tolerance or encouragement of discrimination against non-Muslim communities, then the argument that it is purely symbolic is refuted by its practical political consequences. And if it is retained as a purely symbolic provision with no legal content, then it serves no constitutional purpose except as a marker of the political power of those who insisted on its retention, which is not a principled basis for a constitutional provision.

The most constitutionally coherent solution to the state religion controversy would be either to remove the state religion provision entirely, replacing it with a comprehensive provision guaranteeing equal freedom of religion and the prohibition of state endorsement of any religion, or to retain the state religion provision but accompany it with a clear constitutional specification of its legal meaning and the specific protections it does not override, including an explicit constitutional guarantee that it does not deprive members of any religion of any constitutional right enjoyed by members of the state religion. The CRC's approach of retaining the state

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religion provision while replacing secularism with pluralism and without providing this clarification represents a constitutional compromise that satisfies neither the advocates of genuine religious equality nor those who wanted the strongest possible constitutional affirmation of Islam's special status.

CHAPTER SIX: THE PROPOSED NEW FOUNDATIONAL PRINCIPLES: EQUALITY, HUMAN DIGNITY, SOCIAL JUSTICE, AND PLURALISM

6.1 Equality as Constitutional Foundation: From Formal to Substantive

The Constitutional Reform Commission's proposal to include equality as one of the new foundational principles of the Bangladesh Constitution represents a potential constitutional transformation if the equality principle is understood in substantive rather than merely formal terms. Formal equality, as a constitutional principle, requires that similarly situated persons be treated in the same way and that distinctions between persons be based on relevant rather than arbitrary characteristics. This is essentially the content of Article 27's existing equality before law guarantee, and its elevation to a foundational principle would add little to the existing constitutional framework unless it carries a more demanding substantive meaning.

Substantive equality, by contrast, requires that the constitutional framework address the structural conditions that produce inequality rather than merely prohibiting formal discrimination in particular transactions or decisions. On the substantive equality account, a constitution that formally prohibits sex discrimination but does nothing to address the structural conditions, including the gendered division of domestic labor, the wage gap, the underrepresentation of women in political and economic decision-making, and the pervasiveness of gender-based violence, that produce profound inequality between men and women in practice, fails to provide genuine constitutional equality. Similarly, a constitution that formally prohibits religious discrimination but does nothing to address the structural disadvantages of religious minorities in Bangladesh's economic, political, and social life fails to provide genuine constitutional equality for those minorities.

The philosophical development of substantive equality theory has been one of the most significant intellectual developments in constitutional law scholarship over the past three decades. Catharine MacKinnon's dominance feminism provides a framework for understanding equality as a prohibition on the systematic subordination of one group by another, rather than merely a prohibition on differential treatment. Sandra Fredman's comparative human rights analysis develops a multidimensional model of equality that encompasses redressing disadvantage, addressing stigma and stereotyping, facilitating participation, and accommodating difference. Sandra Fredman's approach to the development of equality law provides a particularly useful framework for evaluating whether the CRC's proposed equality principle would, if properly implemented, represent a genuine constitutional commitment to substantive equality.

The direct relationship between the equality principle and the quota controversy that triggered the July 2024 uprising deserves careful examination. The student protesters who initially mobilized against the quota system were arguing, in constitutional terms, for a principle of merit-based equality that would treat all citizens equally in the competition for public employment regardless of whether their parents or grandparents had participated in the liberation war. The government's defenders of the quota system were arguing for a principle of compensatory

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equality that would address the historical disadvantage of freedom fighter families and similar groups through preferential treatment. Both positions appealed to equality as a constitutional value, but they understood equality in fundamentally different ways.

The constitutional resolution of this tension requires a framework for distinguishing between differential treatments that constitute impermissible discrimination and differential treatments that represent permissible accommodation of relevant differences or remediation of historical disadvantage. Most contemporary constitutional systems, including those of India, South Africa, Canada, and the United States, have developed constitutional doctrines that permit some forms of affirmative action or preferential treatment for disadvantaged groups while prohibiting arbitrary or irrational discrimination. The Bangladesh constitutional framework needs a similarly sophisticated doctrine, and the elevation of equality to a foundational constitutional principle, if accompanied by the development of a substantive equality jurisprudence that can distinguish between these cases, would represent a significant constitutional advance.

6.2 Human Dignity as Constitutional Foundation: Philosophical Depth and Practical Implications

The inclusion of human dignity as a foundational constitutional principle reflects one of the most significant trends in contemporary constitutional theory and comparative constitutional design. Human dignity has emerged in the past three decades as perhaps the most important foundational value in global constitutionalism, explicitly enshrined as a foundational principle in constitutions ranging from the German Basic Law of 1949, which opens with the declaration that human dignity shall be inviolable, to the South African Constitution of 1996, whose founding provisions establish a state founded on the values of human dignity, equality, and freedom, to the newer constitutions of the post-communist transitions and the post-colonial world.

The philosophical foundations of human dignity as a constitutional principle reach back to Immanuel Kant's moral philosophy, particularly his formulation of the categorical imperative and his analysis of human beings as ends in themselves rather than merely means to others' ends. For Kant, human dignity is the inherent worth that belongs to all rational beings by virtue of their capacity for autonomy, for self-legislation, for the rational determination of their own ends. The Kantian concept of dignity is radically egalitarian in its implications: it grounds the equal moral worth of all persons regardless of their social position, their productive capacity, their intelligence, or any other contingent characteristic.

The constitutional development of dignity jurisprudence, however, has moved beyond a purely Kantian framework to incorporate a broader range of philosophical perspectives. The South African Constitutional Court's dignity jurisprudence, developed through landmark cases including S v Makwanyane (on the death penalty) and National Coalition for Gay and Lesbian Equality v Minister of Justice (on sodomy laws), treats dignity as encompassing not only the Kantian concept of rational autonomy but also the relational and social dimensions of human personhood: the recognition by others that one is a member of the community with an equal right to respect and concern.

The German Federal Constitutional Court's dignity jurisprudence has developed a similarly rich concept. The Court has held that human dignity protects against the degradation and humiliation of individuals, against treatment that reduces them to objects or instruments rather than recognizing them as subjects with inherent worth, and against the systematic denial of the conditions necessary for a minimally dignified human life. The Court's application of the dignity principle in cases involving social welfare, asylum law, prison conditions, and the treatment of

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persons with disabilities demonstrates that dignity is not merely an abstract philosophical concept but a constitutional standard with concrete implications for the treatment of the most vulnerable members of society.

The inclusion of human dignity as a foundational principle in the proposed new Bangladesh constitutional framework has important implications for the enforcement of constitutional rights, the interpretation of limitations on rights, and the evaluation of state policies affecting vulnerable populations. A constitutional framework that treats human dignity as foundational will interpret rights expansively rather than restrictively, because rights are understood as expressions of the dignity that every person inherently possesses. It will apply strict scrutiny to state actions that degrade or humiliate individuals, because such actions violate the foundational constitutional value regardless of whether they technically fall within one of the enumerated fundamental rights. And it will impose on the state a positive obligation to create the conditions under which human dignity can be realized in practice, not merely an obligation to refrain from actively violating dignity through state action.

6.3 Social Justice and Pluralism: Constitutional Substance and Institutional Requirements

Social justice, as a constitutional principle, is closely related to both equality and human dignity but is not reducible to either. While equality addresses the comparative treatment of individuals and groups relative to each other, and dignity addresses the inherent worth of each person that must be respected regardless of comparison with others, social justice addresses the fairness of the overall distribution of benefits and burdens in society, the structural conditions that produce and reproduce social hierarchies, and the obligations of state and society to address inequalities that are not the product of individual choice but of structural conditions that individuals cannot control through their own efforts.

The philosophical literature on social justice is enormous and encompasses perspectives ranging from Rawls's theory of justice, which grounds social justice in the rational choice of principles from behind a veil of ignorance, to Cohen's luck egalitarianism, which holds that justice requires neutralizing the effects of brute luck on life prospects, to Walzer's spheres of justice, which holds that different goods should be distributed according to different principles appropriate to each sphere of social life, to Fraser's social justice framework, which identifies redistribution, recognition, and representation as the three dimensions of justice that a just society must address.

For Bangladesh's specific constitutional context, the most practically important aspects of a constitutional social justice principle concern the structural conditions that produce and reproduce poverty, inequality, and social exclusion in Bangladesh's specific social and economic context. These structural conditions include the pervasive gender inequality that limits women's economic participation and political voice, the discrimination against religious and ethnic minorities that restricts their access to education, employment, and political participation, the exploitation of workers in the garment industry and other sectors, the land insecurity of rural poor and indigenous communities, the inadequate access to education and healthcare for children from poor families, and the structural exclusion of persons with disabilities from economic and social participation.

A constitutional social justice principle that is substantively meaningful, rather than merely rhetorical, would require the state to take active measures to address these structural conditions, not merely to refrain from directly discriminating against disadvantaged groups. This requirement goes significantly beyond the existing constitutional framework's non-justiciable directive principles, and it is precisely the substantive operationalization of social justice as a

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justiciable constitutional right that makes the CRC's proposal to merge Parts II and III of the Constitution into a unified rights charter of such significance.

Pluralism as a constitutional principle, in the context of the CRC's proposals, is intended to address the recognition dimension of social justice identified by Fraser: the constitutional guarantee that all cultural, religious, ethnic, and social groups within Bangladesh's diverse society will be treated with equal respect and dignity, that their particular identities will be recognized rather than suppressed or required to conform to a dominant cultural model, and that their voices will be heard in democratic deliberation on terms of genuine equality. The pluralism principle, if properly implemented, would require the state not merely to refrain from discriminating against minority communities but to actively create the conditions under which all communities can flourish and participate effectively in the political life of the country.

CHAPTER SEVEN: THE NATIONALITY QUESTION: BANGALEE VERSUS BANGLADESHI AND ITS CONSTITUTIONAL IMPLICATIONS

7.1 The Constitutional Dimensions of Nationality

The question of whether the citizens of Bangladesh should be constitutionally designated as Bangalees or as Bangladeshis is far more than a terminological dispute. It engages fundamental questions about the nature of national identity, the relationship between cultural belonging and political citizenship, the position of non-Bengali communities within the constitutional order, and the significance of the distinction between ethnic and civic conceptions of nationhood that is one of the most important debates in contemporary political philosophy.

The distinction between ethnic and civic conceptions of nationhood, developed in the comparative political sociology literature by scholars including Anthony Smith, Eric Hobsbawm, and Jurgen Habermas, is directly relevant to the Bangladesh constitutional debate. Ethnic nationalism defines the nation through shared descent, language, culture, and historical memory, creating a strong sense of particular identity but potentially excluding those who do not share these characteristics. Civic nationalism defines the nation through shared commitment to political institutions, constitutional values, and democratic participation, creating a more inclusive but potentially thinner sense of collective identity. The original Bangalee nationalism of the 1972 Constitution was substantially ethnic, defined through language and culture. The Bangladeshi nationalism proposed by Ziaur Rahman and retained in the current constitutional framework is more civic in formal terms, defined by membership in the state of Bangladesh rather than by particular cultural characteristics.

The Constitutional Reform Commission's proposal to maintain Bangladeshi as the constitutional nationality designation, while replacing the contested nationalism principles with the new values of equality, dignity, social justice, and pluralism, represents a move toward a genuinely civic constitutional nationalism that defines the political community through shared values rather than shared cultural identity. This is broadly consistent with the Habermasian concept of constitutional patriotism, in which political identification is grounded in the universal principles embodied in the constitution rather than in the particular cultural traditions of a dominant ethnic group.

The July Charter endorses the proposal that Bangladeshi will replace Bangalee as the nationality designation in Article 6(2) of the Constitution. This change is constitutionally significant because it formally severs the link between citizenship and Bengali ethnic identity, creating a

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constitutional framework in which all citizens of Bangladesh, regardless of their ethnic, linguistic, or cultural background, are constitutionally recognized as equals in the political community. For the indigenous peoples of the Chittagong Hill Tracts, the Urdu-speaking Bihari community, and other non-Bengali groups within Bangladesh, this constitutional recognition of equal civic belonging is an important, if insufficient, step toward the genuine equality and recognition that pluralist constitutional theory requires.

7.2 The Bihari Community and Statelessness: A Constitutional Scandal

One of the most serious failures of Bangladesh's constitutional nationality framework is the treatment of the Bihari community, sometimes called stranded Pakistanis, who have been living in Bangladesh since the 1971 Liberation War in conditions of virtual statelessness for more than five decades. The Bihari community, which consists of Urdu-speaking Muslims who came to East Pakistan primarily from the Indian state of Bihar following the 1947 partition of India, was identified during the Liberation War with the Pakistani cause and was subject to retributive violence by Bengali nationalists both during and after the liberation war.

After the establishment of Bangladesh, the Bihari community occupied a constitutional limbo: Bangladesh did not recognize them as citizens, and Pakistan, which they had supported, did not accept them for repatriation. They were confined to what were euphemistically called camps, in reality densely populated urban enclaves in which tens of thousands of people lived in conditions of extreme poverty and social exclusion, without access to education, employment in the formal sector, or the legal rights of citizenship.

The constitutional dimensions of the Bihari situation engage the most fundamental rights provisions of the Bangladesh Constitution. The right to a nationality is recognized as a fundamental human right in the Universal Declaration of Human Rights and related international instruments, and the exclusion of the Bihari community from Bangladeshi citizenship while refusing their repatriation to Pakistan creates a condition of statelessness that violates this fundamental right. The Bangladesh High Court's 2008 ruling that Biharis born in Bangladesh after independence are entitled to Bangladeshi citizenship represented an important judicial recognition of this right, but the full implementation of the ruling and the regularization of the legal status of all members of the Bihari community remains incomplete.

The constitutional reform proposals have not addressed the Bihari situation comprehensively, which represents a significant omission in the current reform agenda. A constitutional framework genuinely committed to pluralism, equality, and human dignity must address the situation of the Bihari community as a matter of constitutional priority, recognizing the fundamental injustice of allowing a community of hundreds of thousands of people to live for fifty years in conditions of statelessness and social exclusion as a consequence of political choices made at the time of the country's founding.

CHAPTER EIGHT: THE PREAMBLE AS CONSTITUTIONAL TEXT: LEGAL STATUS, INTERPRETIVE FUNCTION, AND PROPOSED REFORMS

8.1 The Constitutional Preamble: Theory and Function

The preamble of a constitution occupies a distinctive constitutional position that differs from the operative provisions of the text but is not without constitutional significance. In the dominant tradition of constitutional interpretation, the preamble serves primarily as an aid to interpretation

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rather than as an operative provision creating enforceable rights or obligations: it announces the purposes for which the constitution was established, identifies the foundational values that are to guide its application, and provides context for the more specific provisions that follow.

The constitutional theory of preambles has developed significantly in recent decades as courts in various constitutional systems have increasingly drawn on preamble language in constitutional adjudication. The Indian Supreme Court's use of the preamble in constitutional interpretation, and particularly the Court's treatment of the preamble as reflecting the basic structure of the Constitution in the Kesavananda Bharati case, has given constitutional preambles in South Asian constitutional systems a weight that they may not carry in other constitutional traditions. The Bangladesh Supreme Court's basic structure doctrine similarly treats the preamble's foundational commitments as constitutional constraints on the amendment power.

The proposed new preamble for the Bangladesh Constitution, developed from the CRC's recommendations and reflected in the July Charter's proposals, represents a fundamental reconceptualization of the constitutional founding narrative. The CRC proposes returning to the three founding principles of the Mujibnagar Proclamation of Independence of 1971: equality, human dignity, and social justice, arguing that these were the authentic founding principles of the liberation movement that were subsequently replaced by the Awami League's four-point platform in the 1972 Constitution. This argument has both historical force and constitutional significance: if the 1971 Proclamation is treated as the authentic constitutional founding moment, then the principles it articulated have a legitimacy that the 1972 Constitution's principles, chosen by the dominant political party rather than through a genuinely inclusive process, may lack.

The preamble's narrative of the liberation struggle and its foundational commitment to democratic governance would be preserved under the proposed reforms, maintaining the constitutional connection to Bangladesh's founding experience while freeing the constitutional identity from the specific ideological formulations that have proven so contested in the country's subsequent political history.

8.2 The Bismillah Controversy

The constitutional preamble of Bangladesh currently begins with Bismillah-ar-Rahman-ar-Rahim, the Islamic invocation meaning In the name of Allah, the Beneficent, the Merciful, which was inserted by Ziaur Rahman's Fifth Amendment proclamation and retained through subsequent constitutional amendments. The inclusion of the Bismillah in the constitutional preamble was a dramatic symbolic statement of the constitutional order's relationship to Islam, analogous in its significance to the designation of Islam as the state religion through the Eighth Amendment.

The constitutional validity of the Bismillah's inclusion in the preamble has been challenged in the courts, and the High Court Division's rulings on these challenges have been ambiguous. The Bangladesh High Court has at times suggested that the Bismillah's inclusion might be inconsistent with the secularism principle that was restored by the Fifteenth Amendment, but the courts have not definitively struck it down, and the Appellate Division has not definitively ruled on the constitutional validity of the Bismillah in the preamble.

The CRC's proposals do not explicitly address the Bismillah question, which represents an omission in the reform proposals given its obvious constitutional relevance. The July Charter's proposals similarly do not directly engage with this question, reflecting the political sensitivity of any suggestion to remove an Islamic religious invocation from the constitutional text in a predominantly Muslim country where religious sentiment is a powerful political force. The constitutional reform process's avoidance of direct engagement with the Bismillah question is

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understandable in political terms but unsatisfying in constitutional terms, because the presence of an Islamic religious invocation at the very opening of the constitutional text has clear implications for the constitutional commitment to pluralism and equal religious respect that the CRC and the July Charter claim to be advancing.

CHAPTER NINE: GENDER EQUALITY AND WOMEN'S RIGHTS AS CONSTITUTIONAL PRINCIPLES: FROM FORMAL EQUALITY TO TRANSFORMATIVE JUSTICE

9.1 The Constitutional Framework for Gender Equality

The Bangladesh Constitution's treatment of gender equality reflects the same tension between formal constitutional commitment and inadequate practical realization that characterizes so many other dimensions of the constitutional rights framework. Article 28 prohibits discrimination on grounds of sex, among other grounds, and Article 28(2) provides that women shall have equal rights with men in all spheres of the state and of public life. These provisions establish a formal constitutional commitment to gender equality that is substantial in scope.

Article 28(4), however, provides that nothing in the equality and non-discrimination provisions shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizens, a provision that authorizes affirmative measures for women without mandating them. This provision creates a constitutional permission structure for gender-sensitive policies without imposing any positive constitutional obligation on the state to address the structural conditions of gender inequality.

The constitutional framework for women's political representation is established by Article 65(3), which provides for reserved seats for women in the National Assembly. The current constitutional framework reserves fifty seats for women out of a total of three hundred and fifty, representing approximately fourteen percent of the total parliamentary seats. This level of representation falls well short of the thirty percent minimum recommended by international bodies including UN Women and the Inter-Parliamentary Union as necessary for women's political voice to be genuinely effective, and far short of the fifty percent gender parity that many contemporary constitutions target as the principle of representation.

The July Charter's proposal to significantly increase women's representation in the legislature, with 100 of the 400 seats in the proposed lower house reserved for women, represents an important constitutional advance in the framework for women's political representation. However, the constitutional design of these reserved seats matters enormously: if the reserved seats are allocated to women chosen by political parties on the basis of party loyalty rather than elected through competitive processes, as has been the practice with the existing women's reserved seats, then the constitutional mechanism may provide formal representation without providing genuine political voice for women's interests and perspectives.

The most profound gender equality challenge in Bangladesh's constitutional framework is the constitutional accommodation of religious personal law systems that systematically disadvantage women in areas including marriage, divorce, inheritance, and child custody. Bangladesh maintains separate family law regimes for Muslims, Hindus, and Christians, governed respectively by the Muslim Family Laws Ordinance 1961, Hindu personal law, and the Indian Divorce Act 1869 as adopted in Bangladesh. Each of these regimes treats women differently

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from men in ways that, examined against the equality and non-discrimination provisions of the Constitution, might appear inconsistent with constitutional requirements.

The constitutional accommodation of discriminatory personal law through the exception for religious and customary personal law that has been implicitly accepted in Bangladesh's constitutional jurisprudence represents one of the most serious unresolved tensions in the constitutional framework for gender equality. A constitutional order genuinely committed to substantive gender equality cannot indefinitely maintain personal law regimes that systematically favor men in the most intimate and economically significant aspects of life: marriage, property, and parenting. But the constitutional reform of personal law is politically extremely sensitive given the religious dimensions of family law, and the CRC's proposals do not address this dimension of gender equality reform in comprehensive terms.

9.2 The Women's Reform Commission's Proposals and Their Constitutional Significance

The Women's Affairs Reform Commission, one of the eleven commissions established by the interim government, made recommendations that went significantly further than the other reform commissions in addressing gender equality as a constitutional priority. The Women's Commission's recommendations included constitutional amendments to ensure fifty percent representation of women in local government bodies, constitutional provisions requiring gender impact assessment of all legislation, constitutional mandates for the elimination of gender-based violence through specific state obligations, and constitutional recognition of women's unpaid care and domestic work as economically valuable contributions to society.

These proposals reflect the influence of the transformative constitutionalism framework on Bangladesh's reform agenda. Transformative constitutionalism, as developed in the South African constitutional context and more recently elaborated in comparative constitutional scholarship, holds that the constitution should be understood not as a static declaration of existing rights but as a dynamic program for the transformation of social and economic conditions in directions of greater equality, dignity, and justice. On the transformative constitutionalism account, gender equality provisions in the constitution are not merely protections against specific acts of sex discrimination but mandates for the transformation of the structural conditions that produce and reproduce gender inequality.

The NCC's treatment of the Women's Commission's proposals was less than fully satisfactory from a gender equality perspective. The exclusion of the Women's Commission from the NCC's composition, noted by Sara Hossain in her March 2026 analysis, reflects a broader pattern in which the constitutional reform process has not given adequate weight to gender perspectives in its design and deliberative processes. A reform process that claims to advance equality and pluralism but excludes the body specifically charged with addressing gender equality from its deliberative structures fails to practice what it preaches.

CHAPTER TEN: MINORITY RIGHTS AND RELIGIOUS PLURALISM: CONSTITUTIONAL PROTECTION AND ITS FAILURES

10.1 The Constitutional Framework for Religious Minorities

Bangladesh's religious minorities, including the Hindu community (approximately eight to nine percent of the population), the Buddhist community (concentrated in the Chittagong Hill Tracts and Cox's Bazar), the Christian community, and smaller communities including Ahmadis and

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others, have experienced a persistent pattern of discrimination, violence, and property dispossession throughout Bangladesh's constitutional history that represents one of the most serious failures of the constitutional rights framework.

The constitutional provisions that should protect religious minorities are substantial in scope. Article 28's prohibition of discrimination on grounds of religion, Article 31's guarantee of equal protection of the law, Article 38's freedom of association, Article 39's freedom of thought and conscience, and Article 41's freedom of religion together create a textual framework that, if effectively enforced, would provide robust protection for the religious freedom and equal citizenship of Bangladesh's minority communities. The chronic failure of effective enforcement reflects both the institutional weaknesses of the constitutional rights enforcement framework and the structural conditions of religious minority vulnerability in a predominantly Muslim society that have generated persistent political pressure for tolerance of anti-minority violence.

The vested property issue represents one of the most longstanding constitutional injustices affecting Bangladesh's Hindu community. The Enemy Property Act (later renamed the Vested Property Act) enacted during the Pakistan period provided a legal mechanism through which the property of Hindus who had left for India could be treated as state property and reallocated. After independence, the Bangladesh government retained this legal framework, and it was used to dispossess many Hindu families who had remained in Bangladesh of their ancestral properties. The Vested Property Return Act 2001 was intended to address this injustice, but its implementation has been deeply inadequate, and the return of vested properties to their rightful owners has been slow, incomplete, and subject to political manipulation.

The constitutional dimensions of the vested property issue involve the fundamental rights to property under Article 42 and equality under Articles 27 and 28. The application of the Vested Property Act specifically to Hindu families, based on their religious identity and family connections to persons who left the country, represents a form of religious discrimination in property rights that is directly inconsistent with the constitutional equality guarantees. The inadequate implementation of the Vested Property Return Act perpetuates this constitutional injustice in the present, as families who have the legal right to reclaim their ancestral properties are denied effective access to that right through administrative obstruction, judicial delays, and political interference.

10.2 The Ahmadiyya Persecution and Freedom of Religion

The treatment of the Ahmadiyya Muslim community in Bangladesh represents one of the most serious failures of constitutional protection of religious freedom and equality. The Ahmadiyya community, whose members consider themselves Muslim but are declared non-Muslim by mainstream Sunni Islamic jurisprudence and by the legal frameworks of several Muslim-majority states, has been subject to periodic violence, property destruction, and demands for their declaration as non-Muslim in Bangladesh over several decades.

The constitutional dimension of the Ahmadiyya situation engages Article 41's guarantee of freedom of religion and the general equality provisions of Articles 27 and 28. The demand that the state declare Ahmadis non-Muslim is a demand for state endorsement of a particular intra-Muslim theological position as official state doctrine, which would directly violate the constitutional principle, whether called secularism or pluralism, that the state does not grant political status in favor of any religion or use religion as a basis for discrimination against citizens.

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The Bangladesh state's response to anti-Ahmadiyya violence and pressure has been chronically inadequate, reflecting both the political vulnerability of a minority that lacks significant political representation and the political influence of the Islamist parties that have been the primary drivers of anti-Ahmadiyya sentiment. The courts have provided some protection in specific cases, including judicial orders restraining anti-Ahmadiyya demonstrations, but they have not established a comprehensive constitutional framework that would provide systematic protection for the Ahmadiyya community's religious freedom rights.

The CRC's proposal to make pluralism a foundational constitutional principle has direct relevance to the Ahmadiyya situation: a genuine commitment to pluralism, understood as the equal recognition and protection of all religious communities, would require the state to provide effective protection for the Ahmadiyya community's freedom to practice their religion and to identify as Muslims if that is how they understand their religious identity, regardless of the theological views of the majority religious community.

CHAPTER ELEVEN: INDIGENOUS PEOPLES' RIGHTS AND CONSTITUTIONAL PLURALISM: THE CHITTAGONG HILL TRACTS AND BEYOND

11.1 The Constitutional Situation of Indigenous Peoples

The indigenous peoples of Bangladesh, collectively estimated at approximately two million persons belonging to more than forty-five distinct ethnic groups, occupy a position in Bangladesh's constitutional order that is simultaneously protected by some constitutional and legal provisions and excluded from the full constitutional citizenship that their human dignity and equal worth demand. This paradox of formal inclusion and practical exclusion reflects the broader tensions in Bangladesh's constitutional framework between its stated commitment to equality and pluralism and its historical practice of Bengali nationalist homogenization.

The Constitutional Reform Commission's recognition that Bangladesh is a pluralistic, multi-nation, multi-religion, multi-language, and multi-cultural country represents a significant constitutional acknowledgment of the reality of indigenous peoples' presence and their claim to equal recognition. But the constitutional implications of this recognition depend entirely on what institutional arrangements are established to give it practical effect. Recognition without institutional substance is mere acknowledgment without commitment.

The constitutional framework for indigenous peoples' rights in Bangladesh must address several distinct dimensions: land rights and the protection of indigenous territories from encroachment; cultural rights and the constitutional protection of indigenous languages, traditions, and governance systems; political rights and the guaranteed representation of indigenous peoples in constitutional decision-making; and judicial rights including the recognition of indigenous customary law and its relationship to the national legal system.

The Chittagong Hill Tracts Peace Accord of 1997 addressed some of these dimensions, but as the analysis in Part Three of this textbook demonstrates, its implementation has been chronically inadequate. The constitutional reform proposals offer an opportunity to entrench the principles of the Peace Accord at the constitutional level, giving them a legal status that would make their non-implementation directly challengeable as a constitutional violation rather than merely as a breach of a political agreement.

The international legal framework for indigenous peoples' rights, including the UN Declaration on the Rights of Indigenous Peoples of 2007 and the Indigenous and Tribal Peoples Convention

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169 of the International Labour Organization, provides important standards against which Bangladesh's constitutional framework for indigenous peoples can be evaluated. Bangladesh has not ratified ILO Convention 169, and its formal engagement with UNDRIP has been limited. The constitutional reform process offers an opportunity to align Bangladesh's constitutional framework more closely with these international standards, not as a matter of external obligation but as an expression of Bangladesh's genuine commitment to the pluralism and equality that the new foundational principles announce.

CHAPTER TWELVE: THE RELATIONSHIP BETWEEN FOUNDATIONAL PRINCIPLES AND CONSTITUTIONAL AMENDMENT: ENTRENCHMENT, UNAMENDABILITY, AND BASIC STRUCTURE

12.1 The Doctrine of Unamendability and Bangladesh's Constitutional Choices

One of the most significant constitutional design choices facing Bangladesh's current reform process is the question of whether the new foundational principles should be given constitutional entrenchment that protects them from amendment by ordinary constitutional majorities, and if so, through what mechanism that entrenchment should be achieved.

The existing constitutional framework under Articles 7A and 7B, inserted by the Fifteenth Amendment, created a particularly extreme form of entrenchment by declaring certain constitutional provisions to be unamendable and by making any attempt to amend or suspend the unamendable provisions a constitutional offense. The CRC has recommended the repeal of Articles 7A and 7B, which would restore the ordinary amendment framework in which any constitutional provision can be amended by the procedural majorities specified in Article 142.

The basic structure doctrine provides an alternative mechanism for protecting foundational constitutional principles: judicial enforcement of the principle that certain foundational features of the constitutional order are immune from amendment even when the procedural requirements of Article 142 are formally satisfied. The doctrine, as we have seen in Part Four, has been applied by Bangladesh's courts to protect judicial independence and other structural constitutional principles. Its application to the new foundational principles of equality, dignity, social justice, pluralism, and democracy would require the courts to identify these principles as so essential to the constitutional identity of the order that their elimination would constitute the destruction rather than merely the amendment of the constitutional framework.

The comparative constitutional scholarship on the relationship between written unamendability provisions and the basic structure doctrine suggests that these two mechanisms serve complementary rather than identical functions. Written unamendability provisions, as in the German Basic Law's eternity clause protecting human dignity and democratic republican government, provide clear textual authority for the protection of specific foundational principles and create predictability about what the courts will protect. The basic structure doctrine provides a more flexible mechanism that can be applied to foundational principles that are not explicitly designated as unamendable but that the courts identify as essential to the constitutional identity of the order.

The July Charter's proposal that constitutional amendments require a two-thirds majority in the proposed lower house and a simple majority in the proposed upper house represents an important procedural entrenchment of constitutional provisions that would make amendment more difficult than at present, where a two-thirds majority in the unicameral parliament is required. The

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addition of an upper house veto on constitutional amendments creates a structural safeguard against the kind of one-party constitutional manipulation that characterized the Awami League's Fifteenth Amendment, which was enacted with the comfortable parliamentary majority that a competitive election had given the party but without any cross-party deliberation or national consensus.

The further proposal that amendments to the caretaker government system should require a national referendum adds yet another layer of procedural protection for what is regarded as the most fundamental of the structural constitutional provisions. This proposal reflects the specific lesson of the Fifteenth Amendment's abolition of the caretaker system: that the most consequential constitutional structural provisions require protection beyond what even a very large parliamentary majority can provide.

CONCLUDING REFLECTIONS TO PART FIVE

The foundational constitutional principles of Bangladesh, the soul of the constitutional order around which all other constitutional provisions are organized and through which the document's deeper meaning is expressed, have been the site of the most intense and consequential constitutional contests in the country's history. The successive revisions of the founding principles through constitutional amendments, from the original four principles of nationalism, socialism, democracy, and secularism, through Ziaur Rahman's substitution of Bangladeshi nationalism and Islamic faith for Bengali nationalism and secularism, through Ershad's insertion of Islam as the state religion, through the Fifteenth Amendment's conflicted attempt to restore the original principles while accommodating the subsequent revisions, to the current proposals to replace most of the founding principles with the new values of equality, human dignity, social justice, and pluralism, constitute a constitutional narrative that reflects the deep and unresolved tensions in Bangladesh's political and social identity.

The most important analytical conclusion to emerge from the examination conducted in this part is that the foundational constitutional principles have served as instruments of political power at least as often as they have served as genuine constitutional commitments, and that this instrumentalization of constitutional principle is both a cause and a consequence of the constitutional culture of convenience and manipulation that has characterized Bangladesh's political history. The socialism principle was never seriously implemented. The secularism principle was used as a political weapon rather than as a genuine commitment to equal religious respect. The nationalism principle was alternately defined in ways that excluded non-Bengali communities and in ways that erased the historical identity of the liberation movement depending on which political force was in control.

The current proposals to replace these contested principles with new foundations of equality, dignity, social justice, and pluralism represent a genuine attempt to find constitutional principles that can serve as authentic shared values rather than partisan political statements. The philosophical depth of these new principles, as examined in this part, is considerable: if equality is understood in substantive terms, if dignity is understood as the foundational moral worth of every person that the state must actively protect and realize, if social justice is understood as requiring structural transformation of the conditions that produce inequality and exclusion, and if pluralism is understood as genuine equal recognition of all communities and identities, then the

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new foundational principles would represent a far more demanding and constitutionally rich basis for the constitutional order than the contested and manipulated principles they replace.

Whether this promise is realized depends on the institutional framework through which the principles are given operational content, the judicial culture through which they are interpreted and applied, and the political culture through which they are respected and sustained. Constitutional principles, however philosophically admirable, cannot do their work without the institutional and political conditions that translate textual commitment into lived constitutional reality. The constitutional reform process of 2024 through 2026 has created an opportunity to establish both the right principles and some of the institutional conditions for their realization. Whether future generations of Bangladeshis will look back on this moment as the beginning of a genuine constitutional transformation or as another episode of constitutional rhetoric without constitutional substance depends on choices that are being made in the constitutional politics of the present moment.

The urgency of these choices is underlined by Bangladesh's specific vulnerability to constitutional regression. A country that has experienced five decades of alternating authoritarianism and democratic fragility, that has seen its constitutional principles routinely manipulated for partisan advantage, and that has only recently emerged from what its own Supreme Court has called the judicial murder of democracy, cannot afford constitutional reform that is merely formal or provisional. The foundational principles of the new constitutional order must be established with sufficient depth, clarity, and institutional support to resist the political pressures that will inevitably seek to bend them in the direction of whoever holds power at any given moment. The intellectual and political work required to establish that depth and clarity is the ongoing task of Bangladesh's constitutional community, and this textbook is offered as a contribution to that essential project.

FURTHER READING AND KEY SOURCES FOR PART FIVE

On foundational constitutional principles and constitutional identity, students should consult Rawls, John, Political Liberalism (1993); Habermas, Jurgen, Between Facts and Norms (1996) and The Inclusion of the Other (1998); Taylor, Charles, A Secular Age (2007) and Multiculturalism: Examining the Politics of Recognition (1994); Walzer, Michael, Spheres of Justice (1983); and Raz, Joseph, The Morality of Freedom (1986).

On constitutional secularism and its alternatives, students should consult Asad, Talal, Formations of the Secular (2003); Mahmood, Saba, Politics of Piety (2005); Sullivan, Winnifred Fallers, The Impossibility of Religious Freedom (2005); and Stepan, Alfred, Arguing Comparative Politics (2001), particularly the chapter on the twin tolerations. For the specific Bangladesh context of the secularism-pluralism debate, students should consult the interview with Ali Riaz in The Diplomat (February 2025) and the NLS Forum analysis by Ridwanul Haque (August 2025). The Global Voices analysis by Sushovan Dhar (July 2025) provides a comparative perspective on the simultaneous debates in India and Bangladesh.

On constitutional democracy and democratic retrogression, students should consult Ginsburg, Tom and Huq, Aziz, How to Lose a Constitutional Democracy (2018); Levitsky, Steven and Ziblatt, Daniel, How Democracies Die (2018); Mounk, Yascha, The People vs. Democracy (2018); and Przeworski, Adam, Democracy and the Market (1991).

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On gender equality and transformative constitutionalism, students should consult Fredman, Sandra, Discrimination Law (3rd edition, 2022); MacKinnon, Catharine, Toward a Feminist Theory of the State (1989); Klare, Karl, Legal Culture and Transformative Constitutionalism (1998); and Nussbaum, Martha, Women and Human Development (2000).

On indigenous peoples' rights and pluralist constitutionalism, students should consult Anaya, S. James, Indigenous Peoples in International Law (2nd edition, 2004); Tully, James, Strange Multiplicity: Constitutionalism in an Age of Diversity (1995); and Macklem, Patrick, Indigenous Difference and the Constitution of Canada (2001).

On the specific Bangladesh context of foundational principles, students should consult the Constitutional Reform Commission's January 2025 report and Ali Riaz's public explanations of its rationale; Islam, Mahmudul, Constitutional Law of Bangladesh, chapters on fundamental principles; and Haque, Ridwanul, various articles on the constitutional reform process published in international law journals in 2024 and 2025. The July Charter's treatment of foundational principles is analyzed in Haque and Bisarya (ConstitutionNet, December 2025) and in Sara Hossain's contribution to ConstitutionNet (March 2026).

On the capabilities approach to constitutional economic principles, students should consult Sen, Amartya, Development as Freedom (1999) and The Idea of Justice (2009); and Nussbaum, Martha, Creating Capabilities (2011).

On the most recent developments in Bangladesh's constitutional foundational principles debate as of April 2026, students should monitor the constitutional coverage of the Daily Star, Prothom Alo, and the Daily New Age; the I.CONnect blog's Bangladesh analyses; and the ConstitutionNet updates on constitutional reform implementation under the new BNP government.

PART SIX

THE ELECTORAL SYSTEM, DEMOCRATIC ACCOUNTABILITY, AND THE CONSTITUTIONAL ARCHITECTURE OF FREE AND FAIR ELECTIONS: FROM THE CARETAKER GOVERNMENT CONTROVERSY TO THE JULY CHARTER REFERENDUM, THE CRISIS OF ELECTORAL INTEGRITY, AND THE IMPERATIVE OF SYSTEMIC REFORM

PREFACE TO PART SIX

Among the many constitutional controversies that have shaped the turbulent political history of Bangladesh, none has proven more persistently destabilizing, more constitutionally consequential, and more philosophically rich in its implications than the question of how elections should be organized, administered, and guaranteed as genuine expressions of the popular will. The electoral system is not merely a technical arrangement for translating votes into seats. It is the foundational mechanism through which a constitutional democracy renews its claim to legitimate authority, through which the sovereign people exercise the most direct and consequential power available to them under a representative system, and through which the constitutional promise of self-government is either fulfilled or betrayed. When elections are

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credible, the entire constitutional order gains legitimacy from their result. When they are corrupted, manipulated, or captured by incumbents who use the machinery of the state to guarantee their own continuation in power, the constitutional order loses its deepest claim to obedience, and the seeds of crisis and rupture are planted in the political soil.

Bangladesh's constitutional history provides one of the most instructive and disturbing case studies available in the comparative literature on the relationship between electoral integrity and constitutional democracy. From the crisis elections of 1973 under Sheikh Mujibur Rahman's increasingly authoritarian government, through the controlled elections of the Ershad period in the 1980s, through the remarkable democratic transition of the early 1990s and the invention of the caretaker government system as a specifically Bangladeshi solution to the problem of incumbent manipulation, through the catastrophic abolition of that system by the Fifteenth Amendment of 2011 and the non-competitive elections that followed, to the extraordinary constitutional moment of February 2026, when Bangladesh held its first genuinely competitive elections since 2008 alongside a national referendum on constitutional reform, the electoral dimension of Bangladesh's constitutional life has been the site of the most fundamental contestations about the nature of democratic governance and constitutional legitimacy.

This sixth part of the textbook undertakes a comprehensive examination of that history and its constitutional implications. The analysis proceeds through multiple dimensions: the constitutional framework governing elections in Bangladesh, the theory and jurisprudence of electoral democracy, the specific mechanisms of the caretaker government system and the controversies surrounding its creation, operation, abolition, and proposed restoration, the constitutional law of political parties and campaign finance, the design and independence of the Bangladesh Election Commission, the relationship between the electoral system and the representation of women and minorities, the comparative constitutional analysis of Bangladesh's electoral framework against international benchmarks, and the specific reform proposals advanced by the Constitutional Reform Commission, the July Charter, and the broader reform debate that has been energized by the July 2024 uprising and its aftermath. The analysis is grounded in the most recent constitutional and political developments as of April 2026, including the February 2026 elections and referendum and the constitutional debates that have followed from their results.

CHAPTER ONE: THE CONSTITUTIONAL FRAMEWORK OF ELECTIONS - FOUNDATIONS, STRUCTURES, AND THE ARCHITECTURE OF DEMOCRATIC REPRESENTATION

1.1 The Constitutional Basis of Electoral Rights

The constitutional framework governing elections in Bangladesh is distributed across multiple provisions of the 1972 constitution, as amended. Understanding the electoral system requires reading these provisions not merely as discrete technical rules but as parts of an integrated constitutional vision of democratic self-government, a vision that has been imperfectly realized

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throughout Bangladesh's constitutional history but that remains the normative standard against which the country's electoral practice must be evaluated.

The foundational constitutional provision governing elections is Article 7, which vests all power in the Republic in the people and declares that the authority of government is derived from the people. Article 7 is not merely a rhetorical flourish. It is a substantive constitutional commitment to popular sovereignty, and it has profound implications for the design and administration of the electoral system. If power genuinely belongs to the people, then any electoral mechanism that distorts, corrupts, or suppresses the authentic expression of popular will is not merely a technical failure but a constitutional violation, a form of theft of the sovereign power that the constitution places in the hands of the citizenry.

The more specific constitutional framework for elections is provided primarily by Articles 65 through 76, which establish the structure and composition of the Jatiya Sangsad, the national parliament. Article 65 provides for a parliament of 300 members elected from single-member territorial constituencies, together with a prescribed number of seats reserved for women. The allocation of those reserved seats, and the mechanism by which they are filled, has been the subject of significant constitutional debate and will be examined at length in this chapter. Article 66 establishes the qualifications and disqualifications for membership of parliament, raising a series of constitutional questions about the relationship between criminal conviction, foreign citizenship, and political participation that have generated significant litigation. Article 68 addresses the vacation of seats, and Article 70, one of the most consequential and constitutionally controversial provisions in the entire document, prohibits members of parliament from voting against their party in the Jatiya Sangsad in specified circumstances under pain of losing their seats, creating the constitutional phenomenon known as the floor-crossing prohibition.

Beyond the structural provisions, the right to vote and the right to participate in elections derive constitutional support from the fundamental rights provisions of Part III. Article 27 guarantees equality before the law, which has been interpreted to include equality of electoral opportunity, the principle that all citizens have an equal claim to participate in the electoral process. Article 31's guarantee of the right to protection of the law extends to the electoral context, requiring that the legal framework governing elections provide equal protection to all candidates and all voters. Article 32 protects the right to life and personal liberty, which courts have interpreted broadly to include protection against practices of electoral violence and intimidation that effectively deny citizens the ability to exercise their electoral rights in safety. And the freedom of expression guaranteed by Article 39, while subject to reasonable restriction, provides the constitutional foundation for the political speech, debate, and communication that are essential to a functioning democratic electoral process.

The constitutional provisions governing the Bangladesh Election Commission are found in Articles 118 through 126. These provisions establish the constitutional status of the Commission as an independent constitutional body, specify the appointment and tenure of its members, and charge it with superintendence, direction, and control of the preparation of electoral rolls and the conduct of elections to parliament and to the office of the President. The constitutional status of the Election Commission as an independent body, answerable to the constitution rather than to

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any branch of elected government, reflects a constitutional judgment that the integrity of the electoral process requires insulation from the political forces whose fortunes are determined by that process. The gap between this constitutional ideal of independence and the political reality of the Election Commission's operation in Bangladesh has been one of the central themes of the country's electoral history.

1.2 The Philosophy of Electoral Democracy: Theoretical Foundations

Before examining the specific constitutional framework of Bangladesh's electoral system in detail, it is necessary to situate that framework within the broader philosophical and theoretical context of democratic theory. Elections in a constitutional democracy are not self-evidently legitimate merely because they occur. Their legitimacy depends on their satisfying certain substantive conditions that have been elaborated by political philosophers and constitutional theorists over many generations.

The foundational theoretical framework for modern democratic theory was established by Jean-Jacques Rousseau, whose concept of the general will in The Social Contract provided the philosophical basis for the idea that legitimate government must express the authentic preferences of the citizenry rather than merely the preferences of those who happen to hold power. Rousseau's theory generated significant philosophical difficulties, particularly around the question of how the general will can be identified and distinguished from the particular wills of individuals or factions, and these difficulties have occupied democratic theorists ever since. But the core Rousseauian insight, that political authority requires genuine popular consent and cannot be manufactured or simulated, remains foundational to any serious theory of democratic legitimacy.

The utilitarian tradition, associated primarily with Jeremy Bentham and James Mill, offered a different justification for democratic government: elections are valuable because they tend to produce governments that advance the greatest happiness of the greatest number, since rulers who must periodically account to the electorate for their performance have powerful incentives to govern in the public interest. This instrumental justification for democracy, while less philosophically demanding than Rousseau's participatory vision, has the advantage of specifying in relatively clear terms what electoral systems must achieve in order to be evaluated positively: they must create genuine accountability, must make it possible for citizens to remove governments that fail to serve the public interest, and must provide information to voters that allows them to make meaningful comparisons among the alternatives offered.

John Stuart Mill developed a more sophisticated democratic theory that combined elements of both traditions. In Considerations on Representative Government, Mill argued that democratic elections serve both intrinsic and instrumental functions: intrinsic because participation in political life has educative and self-developmental value for citizens, and instrumental because representative government that is genuinely responsive to the electorate is more likely than any alternative to produce good policies and just outcomes. Mill also raised, with characteristic acuity, the problem of electoral systems that are formally democratic but substantively captured by particular interests, warning against what he called the tyranny of the majority and advocating

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mechanisms of representation that would ensure that minority opinions and interests were not wholly excluded from political deliberation.

Robert Dahl's influential theory of polyarchy, developed primarily in A Preface to Democratic Theory and Polyarchy: Participation and Opposition, provides perhaps the most practically useful framework for evaluating real-world electoral systems. Dahl identified the key conditions for a genuinely competitive democratic system: meaningful and extensive participation, the opportunity for citizens to vote on equal terms, access to alternative sources of information independent of government, the right to form and join organizations, including political parties, and responsiveness of government to expressed preferences. These criteria provide a useful checklist against which the performance of Bangladesh's electoral system can be measured, and as the analysis in this part will demonstrate, Bangladesh has struggled to satisfy several of them throughout most of its electoral history.

More recent democratic theory has developed the concept of deliberative democracy, associated particularly with Jurgen Habermas, Amy Gutmann, and Dennis Thompson. Deliberative theorists argue that the legitimacy of electoral outcomes depends not only on formal fairness in the voting process but on the quality of the deliberative process that precedes the vote. Citizens must have access to relevant information, candidates and parties must be able to communicate their positions freely, and there must be genuine public debate among competing viewpoints if elections are to be more than exercises in the aggregation of pre-formed preferences. The deliberative democratic framework has important implications for the evaluation of Bangladesh's electoral system, particularly in periods like the 2014 and 2018 elections when the opposition was either excluded from competition or faced conditions that made meaningful electoral deliberation impossible.

The emerging field of electoral justice theory, developed by scholars including Julio Rios-Figueroa and Matthew Taylor, provides a specifically jurisprudential framework for analyzing electoral disputes and the constitutional law of elections. Electoral justice theory asks what institutional arrangements are necessary to ensure that violations of electoral rules can be effectively identified and remedied, and that the competitive integrity of elections is maintained not only at the formal level of legal rules but in the practical reality of electoral administration. The establishment of independent electoral tribunals, the provision of effective remedies for electoral fraud, and the constitutional protection of voters' rights against intimidation and manipulation are all aspects of the electoral justice framework that have particular relevance to Bangladesh's situation.

1.3 The First-Past-the-Post System and its Constitutional Implications

Bangladesh uses the single-member plurality system, commonly known as first-past-the-post, for elections to all 300 constituency seats in the Jatiya Sangsad. Under this system, each voter casts a single vote for a candidate in their constituency, and the candidate who receives more votes than any other candidate wins the seat, regardless of whether they have received a majority of votes cast. This system, inherited from the British colonial tradition that shaped both the Pakistani and subsequently the Bangladeshi legal and political order, has profound implications for the character of political representation, the structure of party competition, and the relationship

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between electoral outcomes and the distribution of popular support among competing political forces.

The constitutional case for the first-past-the-post system in Bangladesh's context rests primarily on its tendency to produce stable single-party governments with clear parliamentary majorities, its simplicity of operation in a country with limited institutional capacity and a large electorate with varying levels of political education, and its maintenance of a direct constituency link between elected members of parliament and their geographic communities. These are not trivial advantages. The instability of coalition governments, which is more common under proportional representation systems, has been a significant source of democratic dysfunction in many post-colonial states, and Bangladesh's own experience with political polarization suggests that a government formation process that requires inter-party negotiation and compromise might be difficult to operate constructively in the existing political culture.

But the constitutional case against the first-past-the-post system, particularly in Bangladesh's specific political context, is powerful and has become increasingly difficult to dismiss. The system's tendency to translate relatively small swings in popular support into massive swings in parliamentary representation means that it can produce parliaments that are profoundly unrepresentative of the actual distribution of political opinion in the country. The distortion between vote share and seat share under Bangladesh's first-past-the-post system has been documented in multiple elections. In the 2008 elections, the Awami League received approximately 49 percent of votes but won 230 of 300 seats, while the BNP received approximately 33 percent of votes but won only 30 seats. This represents a radically disproportionate translation of popular support into parliamentary power, with consequences for the constitutional system that go well beyond the merely technical.

When a governing party holds such a overwhelming parliamentary majority that it faces no realistic prospect of being outvoted in parliament on any legislative matter, the constitutional checks and balances that depend on effective parliamentary opposition are severely weakened. The parliamentary committee system loses its scrutiny function when opposition members are a tiny minority who can be outvoted on every question. The legislative process becomes a rubber-stamping mechanism for executive proposals rather than a genuine deliberative process. The governing party can amend the constitution with its own votes alone, removing any practical need to seek cross-party support for even the most consequential constitutional changes. The Fifteenth Amendment of 2011, adopted solely by the Awami League's overwhelming parliamentary majority without any cross-party deliberation or national consensus, was the direct product of this dynamic, and it stands as the most consequential single illustration of the constitutional dangers of the first-past-the-post system in a polarized political environment.

The philosophical and constitutional literature on proportional representation provides a rich body of analysis that is highly relevant to Bangladesh's electoral reform debate. The case for proportional representation rests on the principle of descriptive representation, the idea that a parliament should reflect the actual distribution of political opinion in the electorate in order to claim genuine democratic legitimacy. A parliament in which fifty percent of the seats are held by a party that received forty-nine percent of votes, and in which the remaining fifty-one percent of support is distributed among opposition parties that hold collectively only fifty seats, cannot

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plausibly claim to represent the people in any substantive sense of that term. The Madisonian argument for descriptive representation is grounded not merely in the interest of fair representation for its own sake but in the functional claim that a parliament that reflects the actual diversity of political opinion in the country will produce better deliberation, more inclusive policy, and more durable decisions than one that magnifies the voice of the majority while silencing significant minorities.

John Stuart Mill, in Considerations on Representative Government, argued powerfully for proportional representation precisely on these grounds, contending that the exclusion of significant minorities from effective parliamentary representation was a fundamental defect of the plurality system that undermined the democratic character of government. Mill's specific advocacy was for the Hare system of single transferable voting, a form of proportional representation developed by Thomas Hare, but the underlying philosophical commitment was to the principle that all significant segments of electoral opinion deserved a hearing in the legislative forum.

The July Charter's proposal for a 100-member upper house filled through proportional representation thus represents not merely a technical institutional design choice but a philosophical commitment to a richer and more inclusive vision of democratic representation. By creating an upper chamber whose composition reflects the actual distribution of voting support among political parties, the Charter's proposal would for the first time give Bangladesh a legislative institution in which parties with substantial popular support but weak geographic concentration under the first-past-the-post system would be guaranteed meaningful representation. The philosophical and constitutional case for this reform is strong, and the resistance to it from the BNP, which benefits disproportionately from the first-past-the-post system's tendency to amplify geographic concentration of support into legislative dominance, reflects the political rather than the constitutional logic that has driven much of Bangladesh's electoral reform debate.

CHAPTER TWO: THE BANGLADESH ELECTION COMMISSION - CONSTITUTIONAL DESIGN, POLITICAL REALITY, AND THE STRUGGLE FOR INSTITUTIONAL INDEPENDENCE

2.1 Constitutional Foundations of the Election Commission

The Bangladesh Election Commission occupies a place in the constitutional architecture of Bangladesh that is in principle central and in practice deeply problematic. Established under Articles 118 through 126 of the constitution, the Commission is designated as an independent constitutional body, its members appointed by the President, serving fixed five-year terms, removable only by the same process applicable to a Supreme Court judge, and constitutionally insulated from any interference in the discharge of their functions by any person or authority. The constitutional vision of the Election Commission is of an institution standing above partisan politics, serving the people as a whole, and guaranteeing that the competitive process through

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which political power is allocated operates according to rules that are fair to all participants and credible to the electorate.

The constitutional provisions establishing the Election Commission reflect a sophisticated understanding of the structural problem that confronts any electoral authority in a competitive democracy: the governing party at any given moment has a strong interest in electoral administration that favors its own continuation in power, while the constitutional requirement of democratic legitimacy demands that elections be administered impartially. The solution the constitution adopts, an independent constitutional body with its members protected against removal by the governing party, is a structurally sound approach to this dilemma, one that mirrors the institutional designs adopted in many other constitutional democracies with independent electoral commissions.

But the gap between constitutional design and institutional reality has been, in the case of Bangladesh's Election Commission, dramatic and persistent. The constitutional protection of the Election Commission's independence is only as robust as the appointments process that determines who sits on the Commission in the first place, and this is where Bangladesh's constitutional framework has been most consistently deficient. The original constitution provided no specific mechanism for the appointment of Election Commissioners beyond the general provision that they would be appointed by the President, a provision that in the Westminster parliamentary tradition in which the Bangladesh constitution operates means in practice appointment on the advice of the Prime Minister. This created an obvious structural conflict of interest: the Prime Minister, who is the leader of the governing party and therefore one of the primary interested parties in the outcome of any election, has the effective power to determine the composition of the body charged with administering those elections.

This structural defect produced its predictable consequences throughout Bangladesh's electoral history. Election Commissioners have repeatedly been appointed from among persons regarded as sympathetic to the governing party, and their subsequent administration of elections has reflected the political loyalty of their appointment rather than the constitutional independence their office demands. The Election Commission that administered the highly controversial 2014 elections, in which the Awami League was returned unopposed in 154 constituencies due to the BNP's boycott, and that administered the 2018 elections, which were widely characterized by domestic and international observers as having been decided by ballot stuffing, voter intimidation, and systematic irregularities, was an appointed body whose composition had been determined by the Awami League government whose electoral fortunes were the primary object of its administration.

The failure of constitutional independence of the Election Commission is not merely an administrative failure. It is a constitutional failure of fundamental importance, because it strikes at the root of the democratic legitimacy that the constitutional system is designed to produce and protect. If elections are administered by a body that is not in practice independent of the governing party, then elections cannot serve their constitutional function as genuine expressions of the popular will, and the entire constitutional claim of the governing party to exercise power on the mandate of the people is undermined.

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2.2 Comparative Constitutional Models of Electoral Commission Independence

The problem of designing an electoral commission that is genuinely independent of the political forces it oversees is one that constitutional systems around the world have addressed through a variety of institutional mechanisms. A comparative constitutional analysis of these mechanisms is essential both to understanding the specific failures of Bangladesh's approach and to evaluating the reform proposals that have been advanced in the current constitutional reform process.

The Indian Election Commission provides the closest geographically and institutionally relevant model. India's Election Commission, established under Article 324 of the Indian Constitution, has achieved a reputation for substantial independence that has been regarded as one of the successes of South Asian constitutional design. The Indian Commission's independence has been protected by a combination of constitutional entrenchment of its status, the personal stature of the Chief Election Commissioners who have served in the role, and the development of a political culture in which the Commission's authority to supersede state administrations during election periods is respected by political actors of all parties. Landmark Indian Election Commissioners like T.N. Seshan, who served from 1990 to 1996 and dramatically expanded the Commission's use of its powers to discipline political parties and officials who violated electoral rules, demonstrated that the independence of an electoral commission depends not only on formal constitutional protection but on the institutional courage and personal integrity of its members.

The German model provides a different approach, through the design of the Federal Returning Officer as a high-ranking career civil servant protected by the comprehensive civil service independence provisions of German administrative law. The German model's strength lies in its integration of electoral administration within a broader framework of depoliticized public administration, but its applicability to Bangladesh is limited by the fact that Bangladesh lacks the comprehensive civil service independence framework that makes the German model function.

South Africa's Independent Electoral Commission, established under Chapter 9 of the 1996 Constitution, provides a model that may be more directly relevant to Bangladesh's situation. The South African Commission is appointed through a multi-stage process involving parliamentary scrutiny, nomination by civil society, and appointment by the President, with the explicit requirement that persons appointed demonstrate independence, impartiality, and commitment to the Constitution. The South African constitutional framework for the IEC also includes provision for direct public participation in the appointments process, a feature that addresses the concern that appointments controlled by the executive may reflect partisan rather than constitutional priorities.

The Canadian Elections Canada model, in which the Chief Electoral Officer is appointed by resolution of the House of Commons rather than by the executive, and whose office reports directly to Parliament rather than to the government, provides yet another approach. The parliamentary appointment mechanism, by requiring broad legislative consensus rather than merely executive decision, creates a stronger structural guarantee of independence than purely executive appointment.

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These comparative models illuminate the structural weaknesses of Bangladesh's electoral commission appointment process and point toward reform mechanisms that could strengthen genuine independence. The Constitutional Reform Commission's proposals for a multi-stakeholder appointments process, involving the prime minister, the leader of the opposition, the chief justice, and other constitutional actors, represent an attempt to apply the lessons of these comparative models to Bangladesh's specific constitutional context.

2.3 The Election Commission's Powers and Their Limits

The Bangladesh Election Commission's constitutional powers are extensive in principle. Under Article 119, the Commission has superintendence, direction, and control over the preparation of electoral rolls and the conduct of elections. Under Article 126, all executive authorities of the Republic are constitutionally required to assist the Commission in the performance of its functions. These provisions vest in the Commission a broad constitutional authority to take whatever measures are necessary to ensure the integrity of the electoral process, including the power to override directions from the executive branch when those directions conflict with the Commission's constitutional mandate.

In practice, these powers have rarely been exercised with the independence and vigor that the constitutional text contemplates. The Commission has been reluctant to use its powers against sitting governments, has often deferred to executive authority in matters where the constitution clearly places the Commission in a supervisory role, and has repeatedly failed to take effective action against the systematic irregularities that have characterized many of Bangladesh's elections. The institutional culture of the Commission has been one of compliance with political authority rather than assertion of constitutional independence, a culture that reflects the political conditions of appointment and the generally weak tradition of institutional independence from political authority in Bangladesh's public administration.

The question of the Election Commission's enforcement powers has become particularly acute in the context of campaign finance regulation. Bangladesh's electoral laws impose formal limits on campaign expenditure and require disclosure of the sources of campaign finance, but the Commission's enforcement of these requirements has been notoriously lax. The result is an electoral environment in which political parties and candidates with access to large amounts of private money enjoy a systematic advantage over those without such access, and in which the constitutional commitment to equal political participation is effectively undermined by the unequal distribution of political finance.

The relationship between the Election Commission and the judiciary has been a further source of constitutional complexity. The Supreme Court has been called upon repeatedly to adjudicate challenges to the conduct of elections, the decisions of the Election Commission, and the validity of electoral laws, and its jurisprudence in this area has been important but not always consistent. The tension between the Commission's constitutional mandate to administer elections and the judiciary's constitutional power to review the legality of the Commission's decisions has produced a complex pattern of institutional interaction that has not always served the interests of electoral integrity.

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2.4 The July Charter Proposals for Election Commission Reform

The July Charter's proposals for reforming the Election Commission appointment process represent the most significant attempt in Bangladesh's constitutional history to address the structural defect of executive control over electoral commission appointments. The Charter proposes that the Commission be formed under the supervision of a committee comprising the Speaker, Deputy Speaker, Prime Minister, Leader of the Opposition, and the Chief Justice, creating a multi-stakeholder appointments process that distributes the appointment power among actors with different constitutional roles and political interests.

This reform proposal reflects a sophisticated understanding of the institutional problem it seeks to address. By distributing appointment authority among five constitutional actors rather than concentrating it in the Prime Minister, the Charter's proposal creates structural incentives for the appointment of genuinely independent commissioners, since any nominee who is perceived as too closely identified with the governing party's interests is likely to face opposition from the opposition-affiliated members of the appointments committee. The inclusion of the Chief Justice in the appointments process adds a legal dimension to the committee's composition, potentially encouraging the appointment of persons with recognized legal competence and integrity rather than merely political loyalty.

The proposal is not without limitations. A committee of five, including the prime minister and the chief justice who are themselves the product of appointment processes that may be politically influenced, does not guarantee independence in any absolute sense. The history of multi-stakeholder appointments processes in other constitutional systems, including India's collegium system for judicial appointments, which has faced its own significant criticisms, illustrates the difficulty of designing appointments processes that are genuinely insulated from political influence. Moreover, the specific design of the appointments committee, its procedures, the criteria it applies, the transparency with which it operates, and the remedies available when it fails to apply those criteria consistently, will be crucial to determining whether the structural reform produces genuine institutional independence or merely creates a more elaborate version of the same political capture.

The Charter's proposals also include strengthening the Commission's enforcement powers, extending its jurisdiction over digital campaigning and social media political communication, and providing it with explicit constitutional authority to sanction political parties that violate electoral rules, including through deregistration in extreme cases. These proposals address the practical enforcement deficits that have undermined the Commission's effectiveness, and they reflect the recognition that formal powers are meaningless without the institutional capacity and political will to exercise them.

CHAPTER THREE: THE CARETAKER GOVERNMENT SYSTEM - HISTORY, JURISPRUDENCE, CONTROVERSY, AND CONSTITUTIONAL SIGNIFICANCE

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3.1 The Origins of the Caretaker Government Concept in Bangladesh

The caretaker government system, which became the most distinctive and internationally discussed feature of Bangladesh's constitutional arrangement in the 1990s and 2000s, was not a product of the original constitutional design of 1972. It was an improvised institutional innovation, born from the specific crisis conditions of Bangladesh's political situation in the early 1990s, and it reflects both the creativity and the fragility of constitutional arrangements that emerge from political crisis rather than deliberate constitutional planning.

The background to the caretaker government concept lies in the structural problem of incumbent manipulation of elections that has been a recurrent pathology of Bangladeshi electoral politics. The period of parliamentary democracy in Bangladesh from 1973 to 1975 was characterized by elections held under the supervision of the Awami League government that delivered results heavily favorable to the governing party, raising serious doubts about the integrity of the process. The subsequent periods of military rule under Ziaur Rahman and Hussain Muhammad Ershad were characterized by elections designed primarily to provide a veneer of democratic legitimacy for non-democratic regimes, with levels of manipulation that were understood by all domestic and international observers to make the results meaningless as expressions of genuine popular preference.

The restoration of parliamentary democracy in 1991 following the mass uprising that toppled Ershad created both the opportunity and the necessity for serious thinking about how elections could be made genuinely competitive in a political environment where the governing party's control of state machinery gave it decisive advantages in any election conducted under its supervision. The 1991 elections were held under a caretaker arrangement, with Justice Shahabuddin Ahmed serving as Acting President after Ershad's resignation, and were generally regarded as the freest and fairest elections in Bangladesh's history up to that point. The experience demonstrated that the institutional separation of electoral administration from the governing party was not merely theoretically desirable but practically achievable and effective.

The caretaker government concept was subsequently developed through a series of political negotiations and constitutional amendments. When the Bangladesh Nationalist Party won the 1991 elections and the Awami League became the principal opposition, the Awami League mounted an aggressive campaign for the institutionalization of the caretaker system as a permanent constitutional arrangement, arguing that no political party could be trusted to administer elections impartially when its own continuity in power depended on the outcome. The BNP initially resisted this demand, but the political dynamics of Bangladesh's deeply polarized party politics made the caretaker issue a central focus of opposition mobilization, and the BNP government ultimately agreed to the constitutional amendment that formalized the system.

3.2 The Thirteenth Amendment and the Constitutional Institutionalization of the Caretaker System

The Thirteenth Amendment to the Constitution, adopted in March 1996 after a remarkable political drama that included a boycotted election in February 1996 that the Awami League and other opposition parties refused to participate in, inserted a new Article 58B through 58E into the

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constitution that established the caretaker government system as a permanent constitutional arrangement.

Under the Thirteenth Amendment, the constitutional framework for the caretaker government was as follows. When a parliament completed its term or was dissolved, the government of the country would be handed over to a non-partisan caretaker government headed by a Chief Adviser. The Chief Adviser would be the immediately retired Chief Justice of Bangladesh if he or she was willing to serve. If the retired Chief Justice was unable or unwilling to serve, the position would go to the next most recently retired Chief Justice, and so on down the line of retired Chief Justices. If none of the retired Chief Justices were available, the Chief Adviser would be a person who was acceptable to both the Awami League and the BNP, designated through a process of political negotiation. The caretaker government would remain in office for a maximum of ninety days, during which it would conduct parliamentary elections and then hand power to the newly elected parliament and government.

The constitutional rationale for the caretaker system was explicitly stated in the parliamentary debates and political discourse surrounding its adoption: elections conducted under the supervision of a partisan government are structurally unfair because the governing party can use the resources of the state, including the civil administration, the police, and the publicly owned media, to advantage itself in the electoral competition. By replacing the partisan government with a non-partisan body of technocrats and retired public officials for the duration of the electoral period, the caretaker system was designed to level the playing field and ensure that elections reflected genuine popular preferences rather than the organizational advantages of incumbency.

The theoretical foundation of the caretaker system draws on several strands of constitutional and democratic theory. The most direct intellectual ancestor is the principle of electoral neutrality, the idea that the process through which political authority is allocated must be administered by actors who are not themselves interested parties in the outcome of that allocation. This principle is foundational to the theory of electoral justice and reflects a basic insight about the structural conditions for fair competition: a race cannot be fair if one of the competitors is also the race organizer. The caretaker system operationalizes this principle by institutionally separating the administration of the electoral competition from the participants in that competition.

A second theoretical foundation is the concept of transitional institutions, developed in the political science literature on democratic transitions. Samuel Huntington, Larry Diamond, and other scholars of democratic transitions have emphasized the importance of institutional arrangements that manage the transfer of political power during periods of democratic uncertainty or instability. The caretaker government can be understood as a specifically Bangladeshi version of a transitional institution, one designed to manage the potentially dangerous transition between one elected government and the next in a political environment where the two major parties have a deeply adversarial relationship and where the fear of electoral manipulation by an incumbent government is a significant source of political instability.

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3.3 The Operation of the Caretaker System: Successes and Failures

The caretaker government system operated through four electoral cycles between 1996 and 2008, with results that were, on balance, significantly more credible than the elections held during periods of partisan government. The 1996 elections under the caretaker government headed by Justice Habibur Rahman, the 2001 elections under the caretaker government headed by Justice Latifur Rahman, and the 2008 elections under the quasi-caretaker arrangement established after the military-backed caretaker government that took power in January 2007, were all characterized by levels of competitive credibility and electoral integrity that represented a significant improvement over the partisan elections of the earlier period.

But the caretaker system also experienced significant failures and generated its own distinctive constitutional problems. The most consequential was the extended military-backed caretaker government of 2007 to 2008, which took power in January 2007 after the breakdown of the constitutional caretaker mechanism in an atmosphere of intense political crisis, declared a state of emergency, arrested large numbers of political leaders including both Sheikh Hasina and Khaleda Zia on corruption charges, and remained in power for nearly two years before eventually facilitating the 2008 elections. This episode demonstrated that the caretaker system, despite its constitutional institutionalization, was not immune to manipulation by the military and could itself become a vehicle for the suspension of democratic politics under the guise of electoral administration.

The constitutional difficulties created by the caretaker system also included the problem of democratic accountability during the caretaker period itself. A caretaker government, by definition, lacks the democratic mandate of a government elected by the people. Its authority derives from constitutional appointment rather than popular election. During the caretaker period, which in the 2007 to 2008 case extended to nearly two years far beyond the constitutional maximum of ninety days, the country was governed by an unelected body that exercised all the powers of a full government without any of the democratic accountability that justifies the exercise of such powers. The constitutional theory of parliamentary democracy struggles to justify extended rule by an unelected executive, and the 2007 to 2008 experience made this theoretical tension vivid and practically consequential.

A further constitutional problem was the mechanism for choosing the Chief Adviser. The provision that the Chief Adviser should be the immediately retired Chief Justice created perverse incentives for strategic retirement timing, as governments could, by manipulating judicial appointment, potentially influence who would serve as Chief Adviser. This problem became concrete in 2006, when the BNP government extended the retirement age of judges in circumstances that were widely seen as designed to ensure that a justice who was regarded as sympathetic to the BNP would be in line to serve as Chief Adviser, a maneuver that the Awami League characterized as a fundamental subversion of the caretaker system's neutrality guarantee.

3.4 The Eighth Bench Reference Case and the Supreme Court's Advisory Opinion

The most important judicial engagement with the caretaker government system occurred in the Eighth Bench Reference case, in which the full Appellate Division of the Supreme Court was

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asked to provide an advisory opinion on the constitutional validity of the Thirteenth Amendment. The case arose in circumstances of acute political controversy and produced a judicial opinion that has been, in the view of most constitutional scholars, deeply problematic in its reasoning and catastrophically consequential in its political effects.

The court's advisory opinion, delivered in May 2011 during the period of the Awami League government that had come to power after the 2008 elections, declared the Thirteenth Amendment unconstitutional on the grounds that the caretaker government system was incompatible with the basic structure of the constitution as a parliamentary democracy. The court's reasoning was that under a genuine parliamentary democracy, executive power must be exercised by a government accountable to parliament and through parliament to the people, and that the caretaker government, being unelected and unaccountable to parliament, violated this fundamental requirement.

The judgment has been subjected to searching and largely devastating criticism by constitutional scholars. The most fundamental objection is that the court's invocation of the basic structure doctrine was essentially circular: the court used the doctrine to protect the principle of parliamentary accountability while ignoring the equally fundamental constitutional principle that elections must be genuinely free and fair, a principle that the caretaker system was specifically designed to protect. The judgment treated the formal requirement of parliamentary accountability as an absolute constitutional principle while dismissing as constitutionally irrelevant the substantive requirement that elections be genuine expressions of popular will rather than manipulated results of partisan administration. This was, as scholars including Ridwanul Hoque and Shahdeen Malik observed, a deeply selective and arguably politically motivated application of basic structure doctrine.

The court's own ambivalence about the practical implications of its ruling was reflected in the extraordinary observation, included in the judgment, that notwithstanding the unconstitutionality of the Thirteenth Amendment, the caretaker system might be continued for two more electoral cycles to allow time for political parties to develop mechanisms that would make it unnecessary. This suggestion, that an unconstitutional provision should continue to be applied because its unconstitutionality might produce politically inconvenient results, represented an unusual and much-criticized departure from the normal practice of judicial declarations of unconstitutionality. It also turned out to be practically ineffective, as the Awami League government ignored the court's suggestion and proceeded to abolish the caretaker system through the Fifteenth Amendment without the two-cycle grace period the court had recommended.

The constitutional theory of the court's decision drew on the Indian Supreme Court's basic structure doctrine, developed initially in Kesavananda Bharati v State of Kerala (1973) and subsequently elaborated in a long series of Indian constitutional decisions. But the Bangladeshi court's application of the doctrine in this case represented a significant departure from the Indian precedents in one crucial respect: the Indian Supreme Court has consistently used the basic structure doctrine to protect substantive constitutional rights and democratic principles against amendment, not to enforce formal institutional arrangements against substantive challenges based on the requirements of genuine democratic governance. Using the basic structure doctrine to protect the formal structure of parliamentary accountability while abandoning the substantive

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requirement of genuine electoral competition reversed the normal function of the doctrine and produced a result that could only be described as anti-democratic in its practical effect.

3.5 The Fifteenth Amendment, the Abolition of the Caretaker System, and the Constitutional Consequences

The Fifteenth Amendment of 2011, which formally abolished the caretaker government system, has been analyzed in detail in earlier parts of this textbook in the context of the overall constitutional reform program it represented. In the present context, the focus is specifically on its abolition of the caretaker system and the constitutional consequences that followed.

The abolition of the caretaker system through the Fifteenth Amendment was justified by the Awami League government on the basis of the Supreme Court's advisory opinion, which the government characterized as a binding judicial declaration of unconstitutionality. But as the analysis above indicates, the court's own opinion was more nuanced than this characterization suggested, and the government's use of the court's reasoning while ignoring the court's own practical recommendation of a transitional period reflected the selective instrumentalization of judicial authority that has characterized much of Bangladesh's constitutional politics.

The constitutional consequences of the Fifteenth Amendment's abolition of the caretaker system were devastating. The 2014 elections, held under the supervision of the Awami League government, were boycotted by the BNP and most other opposition parties, resulting in the return of the Awami League unopposed in 154 of the 300 constituencies. The 2018 elections, while nominally contested by the opposition, were characterized by what domestic and international observers described as systematic fraud, with the specific practice known locally as "midnight voting" in which ballot boxes were filled with fraudulent votes overnight before polling day. The Awami League won 288 of 300 seats in circumstances that could not plausibly be described as reflecting genuine popular support of any remotely corresponding magnitude.

The political and constitutional consequences of these illegitimate elections were cumulative and ultimately catastrophic. A government whose electoral mandate was widely regarded as fraudulent had no genuine popular accountability, and its determination to maintain power through increasingly authoritarian means reflected the structural logic of a regime that knew it could not survive genuinely competitive elections. The constitutional checks and balances that might have constrained executive overreach were systematically weakened by constitutional amendments and political appointments that converted nominally independent institutions into instruments of the ruling party. The judiciary, whose independence has been analyzed in Part Four of this textbook, was brought under political control through the appointment process and through constitutional amendments that eliminated the effective separation of the court from executive influence. The result was the system of competitive authoritarianism that produced the conditions for the July 2024 uprising and the constitutional crisis that followed.

3.6 The July Charter and the Restoration of the Caretaker System

The July Charter of October 2025 included among its central reform proposals the restoration of a caretaker government system for overseeing elections, a proposal that reflected the broad

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consensus among Bangladesh's political parties and civil society that the abolition of the caretaker system had been a fundamental constitutional error with catastrophic consequences for democratic governance. The Charter's caretaker government proposal differs in important respects from the Thirteenth Amendment's original design, reflecting both the lessons learned from the failures of the original system and the political negotiations among parties with different institutional interests.

The Charter's caretaker mechanism would be formed through a five-member selection committee comprising the prime minister, the leader of the opposition, and the second-largest opposition party, a design that distributes the selection power among actors with competing political interests and thereby creates structural incentives for the selection of genuinely non-partisan figures. The inclusion of the second-largest opposition party in the selection committee reflects the recognition that Bangladesh's political system is not simply binary, with the Awami League and BNP as the only significant actors, and that the exclusion of third parties from the caretaker selection process was a structural weakness of the original Thirteenth Amendment design.

The Charter's caretaker proposals also address the problem of extended caretaker rule that produced the crisis of 2007 to 2008. By establishing clear time limits and reporting mechanisms, the Charter seeks to prevent a repetition of the situation in which a caretaker government that was constitutionally limited to ninety days of operation remained in power for nearly two years under military backing. The proposal that constitutional amendments to the caretaker system should require a national referendum, creating a protection against the kind of one-party constitutional manipulation that produced the Fifteenth Amendment, represents the most constitutionally significant element of the Charter's caretaker framework and will be examined in detail later in this chapter.

The question of whether the restored caretaker system will be constitutionally vulnerable to the same judicial challenge that produced the 2011 advisory opinion is one that has been extensively discussed by constitutional scholars in the reform debate. The court's 2011 reasoning was based on the incompatibility of the caretaker system with the basic structure doctrine's requirement of parliamentary accountability. If the new caretaker system is given its own constitutional entrenchment through a specific amendment that protects it from challenge under the basic structure doctrine, the constitutional vulnerability identified by the court would be addressed. But the more fundamental issue is the adequacy of the basic structure doctrine as a framework for evaluating constitutional provisions that are specifically designed to protect democratic integrity, and the reform debate offers an opportunity to develop a richer and more sophisticated judicial framework for evaluating the constitutional validity of electoral administration mechanisms.

CHAPTER FOUR: ARTICLE 70, FLOOR CROSSING, AND THE CONSTITUTIONAL PATHOLOGY OF PARTY DISCIPLINE

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4.1 The Constitutional Text and its Provisions

Article 70 of the Constitution of Bangladesh represents one of the most distinctive and constitutionally problematic provisions in the entire document. Its text, while apparently simple, has generated enormous controversy, significant constitutional litigation, and profound effects on the character of parliamentary democracy in Bangladesh. The article provides that a member of parliament shall vacate their seat if they resign from the party on whose ticket they were elected, vote in the parliament against the directions of the party, or abstain from voting against the party's directions. The consequence of any of these actions is the automatic vacation of the parliamentary seat, with no discretion available to the presiding officer and no opportunity for the affected member to contest the determination before any tribunal.

The original justification for Article 70 was rooted in the specific political anxieties of Bangladesh's founding moment. The experience of Pakistan's political history, in which frequent floor-crossing by members of parliament had contributed to chronic governmental instability, and the Awami League founders' memories of the political chaos of Pakistan's parliamentary period in the 1950s, made them deeply concerned about the destabilizing potential of unfettered parliamentary independence. The constitutional restriction on floor crossing was designed to ensure that parliamentary majorities, once established through elections, would provide stable governing coalitions rather than fragile arrangements vulnerable to defection and the consequent governmental instability.

This justification is not without merit, particularly in the context of a newly independent state with limited institutional capacity and a precarious political environment. Governmental stability is a genuine constitutional value, and mechanisms that protect a governing majority against the defection of individual members serve the function of maintaining the conditions under which coherent public policy can be developed and implemented. But the costs of Article 70 in terms of the values of parliamentary independence, deliberative democracy, and legislative accountability have been enormous, and most constitutional scholars who have analyzed the provision conclude that its costs vastly outweigh its benefits.

4.2 The Constitutional Critique of Article 70

The constitutional critique of Article 70 proceeds on multiple levels, each illuminating a different dimension of the provision's problematic relationship to the values of constitutional democracy.

At the most basic level, Article 70 violates the representative theory of parliamentary democracy by removing the independence of judgment that is the core obligation of a member of parliament under classical liberal democratic theory. Edmund Burke's celebrated speech to the electors of Bristol in 1774 articulated the foundational principle of representative democracy that the member of parliament owes their constituents not mere representation of their immediate preferences but the exercise of independent deliberative judgment on their behalf. Burke's distinction between a delegate, who merely channels the preferences of their principals, and a representative, who exercises independent judgment in the interests of those principals, captures something essential about the theory of parliamentary democracy: the parliament is not merely a mechanism for aggregating preferences but a deliberative body in which the collective judgment

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of the nation's representatives, informed by debate and deliberation, produces outcomes that are wiser than any aggregation of prior preferences could achieve. Article 70 converts Bangladesh's parliament from a deliberative into a delegative body, reducing its members from representatives to delegates of their party leadership.

At a more specific level, Article 70 concentrates power in the hands of party leaders and particularly in the hands of whoever controls the party's central decision-making machinery. When a member of parliament cannot vote against their party without losing their seat, effective legislative power resides not in the parliament itself but in the party caucus that determines the party's legislative position. In Bangladesh's highly centralized party structure, where Sheikh Hasina and Khaleda Zia have historically exercised near-absolute authority over their respective parties' organizational decisions, Article 70 effectively transformed the parliament from a constitutional institution exercising independent legislative authority into an extension of the party leaders' personal power.

The constitutional implications of this concentration of party-mediated power were vividly illustrated during the Fifteenth Amendment's passage in 2011. Every member of the Awami League's parliamentary group voted for the amendment, as required by Article 70. There is no public record of any Awami League member of parliament expressing doubts about the wisdom or constitutionality of the amendment, despite the fact that constitutional scholars, opposition parties, and international observers were raising serious and well-founded concerns. The parliament that is constitutionally prohibited from exercising independent judgment cannot perform its constitutional function as a check on the executive, and the Fifteenth Amendment's passage illustrated this structural incapacity with particular clarity.

The comparative constitutional perspective on floor crossing is instructive. Most mature parliamentary democracies do not have constitutional provisions equivalent to Article 70. Members of parliament in the United Kingdom, India, Australia, Canada, and most other parliamentary systems with Westminster constitutional traditions have, in principle, the freedom to vote against their party's position without automatically losing their seats. Party discipline in these systems is maintained through political rather than constitutional means: the threat of deselection at the next election, the loss of ministerial office or front-bench positions, and the social and political costs of being identified as a rebel. The relative effectiveness of political as opposed to constitutional mechanisms for maintaining party cohesion suggests that Article 70's constitutional rigidity is not necessary to achieve the legitimate goal of governmental stability and that it imposes costs in terms of parliamentary independence that are not required by any genuine constitutional necessity.

The Indian Supreme Court's jurisprudence on anti-defection provisions under the Tenth Schedule of the Indian Constitution provides relevant comparative material. India's anti-defection law, adopted through the Fifty-Second Amendment in 1985, imposes similar restrictions on floor crossing to those in Article 70 but has been subjected to sustained and sophisticated judicial interpretation that has attempted to distinguish between legitimate exercise of parliamentary judgment and opportunistic political defection. The Indian Supreme Court's decisions in Kihoto Hollohan v Zachillhu (1993) and subsequent cases have attempted to identify a constitutional middle ground that protects parliamentary discipline against opportunistic defection while

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preserving space for members to exercise genuine independent judgment on matters of constitutional principle. The development of a similar jurisprudential framework in Bangladesh would require the Supreme Court to engage with Article 70 in a more searching and principled way than it has done thus far.

4.3 The July Charter Proposals for Article 70 Reform

The July Charter proposes the abolition of Article 70, with the exception of budget and confidence votes. This proposal represents the most significant reform of parliamentary independence advanced by the reform process, and it has attracted broad cross-party support, including from the BNP, which has previously benefited from Article 70's enforcement of party discipline when in government.

The proposal to retain Article 70's restrictions for budget and confidence votes reflects the recognition that some degree of constitutional protection for governing majorities is necessary to prevent the chronic governmental instability that motivated Article 70's original adoption. A government that cannot maintain a parliamentary majority on its budget cannot govern, and a parliament that can remove a government on a confidence vote must be capable of actually doing so if the accountability mechanism of the Westminster system is to function. The retention of the restriction for these two categories of votes therefore represents a constitutionally defensible compromise between the values of parliamentary independence and governmental stability.

The abolition of the restriction for all other legislative matters, including constitutional amendments, is more constitutionally significant. If members of parliament can vote freely on constitutional amendments without losing their seats, the constitutional amendment process immediately becomes more genuinely deliberative, since the governing party can no longer guarantee the votes of its own members by constitutional compulsion. Any governing party that wishes to amend the constitution would need to make a persuasive case for the amendment to its own parliamentary members as well as to potential cross-party supporters, a requirement that would significantly raise the deliberative quality of the constitutional amendment process.

The reform also has implications for the basic structure doctrine and its judicial enforcement. One of the strongest arguments for robust judicial protection of constitutional principles through the basic structure doctrine is that the parliamentary amendment process cannot be trusted to protect constitutional essentials because Article 70 converts parliament into an instrument of the governing party rather than a genuinely deliberative body. If Article 70 is reformed to permit free voting on constitutional matters, the argument for robust basic structure protection becomes somewhat weaker in its structural premises, even if the substantive case for protecting genuinely foundational constitutional principles through the basic structure doctrine remains.

CHAPTER FIVE: REPRESENTATION OF WOMEN IN PARLIAMENT - CONSTITUTIONAL FRAMEWORKS, POLITICAL FAILURES, AND THE DEMAND FOR SUBSTANTIVE REFORM

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5.1 The Constitutional Framework for Women's Representation

The representation of women in Bangladesh's parliament has been addressed through a specific constitutional mechanism of reserved seats that has been part of the constitutional framework since the original 1972 document. The specific number and allocation mechanism for these reserved seats has changed through constitutional amendments, but the basic approach of reserved seats filled through indirect election by existing parliament members has remained constant and has been the subject of sustained and well-founded criticism by feminist scholars and democratic theorists.

The original 1972 constitution reserved fifteen seats for women, to be filled through a form of indirect election by parliament members. The Third Amendment of 1978 extended the reservation period, and subsequent amendments have periodically adjusted both the number of reserved seats and the duration of the reservation. The Fifteenth Amendment of 2011 set the reserved seats for women at fifty, increasing from the previous forty-five, and extended the duration of the reservation for a further period. In the most recent configuration under the existing constitutional framework, women hold fifty reserved seats out of a total parliament of 350 members, amounting to approximately fourteen percent of total parliamentary seats.

The mechanism through which reserved seats are filled has been the most fundamental constitutional problem with the existing framework. Reserved seats are allocated to parties in proportion to their share of directly elected seats, and the women who fill those seats are nominated by the party leadership rather than elected by any constituency of voters. This means that the women who hold reserved seats in Bangladesh's parliament owe their positions entirely to party patronage rather than to any independent democratic mandate. They are not accountable to any constituency and cannot be removed by any vote other than the loss of their party's confidence. The result is a form of representation that is formally inclusive in quantitative terms but fundamentally deficient in qualitative terms, since it does not provide the women who hold reserved seats with the political independence and democratic accountability that would make their representation substantively meaningful.

5.2 Feminist Theories of Political Representation and their Application to Bangladesh

The theoretical literature on women's political representation provides the conceptual framework for evaluating the constitutional adequacy of Bangladesh's reserved seats mechanism. The foundational distinction in this literature, developed by Hanna Pitkin in her classic work The Concept of Representation, is between descriptive representation, in which the legislature reflects the demographic composition of the population, and substantive representation, in which the legislature advances the interests and perspectives of the groups it claims to represent. The Bangladesh reserved seats mechanism has achieved a degree of descriptive representation in the formal sense that women hold a specified number of parliamentary seats, but it has conspicuously failed to achieve substantive representation because women who hold reserved seats through party patronage lack the political autonomy to advocate effectively for women's interests when those interests conflict with party positions.

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Anne Phillips' influential The Politics of Presence developed the argument that democratic legitimacy requires not merely that women's interests and perspectives be represented by their advocates, but that women themselves be present in decision-making bodies in numbers that allow them to function effectively as a political constituency rather than merely as token participants. The reserved seats mechanism, by filling women's seats through a process that maximizes party control and minimizes women's independent political agency, achieves the formal presence that Phillips identifies as necessary without achieving the substantive political agency that makes that presence meaningful.

Drude Dahlerup's comparative work on gender quotas and their effects on women's substantive representation demonstrates that the effectiveness of quota mechanisms in advancing women's political interests depends critically on the nature of those mechanisms. Gender quotas that give women direct electoral mandates from constituencies produce politically stronger, more independent, and more effective women representatives than patronage-based mechanisms that make women's parliamentary presence dependent on party approval. The lesson for Bangladesh is clear: if the goal is genuine substantive representation of women, the reserved seats mechanism must be reformed to give women representatives a direct democratic mandate.

The Constitutional Reform Commission's proposals for increasing women's representation address some but not all of these issues. The CRC recommended an increase in the number of reserved seats to 100, bringing women's total parliamentary representation to approximately one-third of the lower house. This is a significant quantitative improvement. But the more important question is whether the mechanism for filling those seats would be reformed in ways that gave women representatives genuine political independence and democratic accountability.

The July Charter's proposals include gradually increasing women's representation in the lower house to 100 seats, while the specific mechanism for allocating and filling those seats remained a subject of political debate as of April 2026. The most constitutionally sophisticated approach would be to shift from the current patronage-based indirect election mechanism to a system in which reserved seats were contested through direct elections in specific constituencies or through party lists with gender requirements, giving women representatives an independent democratic mandate rather than one derived entirely from party patronage.

5.3 International Comparative Standards and the Constitutional Demand for Genuine Representation

The international comparative framework for women's political representation has developed significantly in recent years, driven by the work of international organizations including the Inter-Parliamentary Union, UN Women, and the International Institute for Democracy and Electoral Assistance. The 30 percent threshold for women's parliamentary representation, which was the focus of advocacy through the 1990s and 2000s, has been replaced in more recent scholarship by the concept of critical mass theory and by evidence-based analysis of the conditions under which women's presence in legislatures actually translates into substantive policy outcomes that benefit women.

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The Convention on the Elimination of All Forms of Discrimination Against Women, to which Bangladesh is a state party, imposes obligations on Bangladesh to take all appropriate measures to ensure the equal right of women to vote, to be eligible for election to all publicly elected bodies, and to participate in the formulation and implementation of government policy. The Committee on the Elimination of Discrimination Against Women, in its General Recommendation No. 23 on women in political and public life, has consistently taken the position that temporary special measures, including quota systems, are permissible under international law as means of achieving de facto equality for women in political life, but that the effectiveness of such measures depends on their being designed to produce genuine rather than merely formal representation.

The specific international standard most relevant to Bangladesh's situation is the Beijing Platform for Action's goal of at least 30 percent women's representation in national legislatures, a standard that Bangladesh's formal representation of approximately 22 percent including reserved seats does not reach, and that Bangladesh's direct election of women to constituency seats, without reserved seats, falls far short of. Of the 300 directly elected constituencies, women have historically won between fifteen and twenty seats in most elections, representing approximately five to seven percent of the directly elected parliament. This level of direct electoral representation is among the lowest in South Asia and reflects the multiple structural barriers to women's electoral success in Bangladesh's political environment, including violence against women candidates, discrimination in party candidate selection, financial disadvantage relative to male candidates, and the prevalence of social attitudes that disadvantage women in electoral competition.

CHAPTER SIX: THE ELECTORAL LAW FRAMEWORK - REPRESENTATION OF THE PEOPLE, POLITICAL PARTIES, AND THE REGULATION OF ELECTORAL COMPETITION

6.1 The Representation of the People Order, 1972 and its Amendments

The primary legislative framework governing elections in Bangladesh is the Representation of the People Order, 1972, a presidential order issued in the early post-independence period that has been extensively amended in the years since. The RPO, as it is commonly known, establishes the detailed rules governing electoral constituencies, the nomination and qualification of candidates, the conduct of campaigns, the administration of polling, the counting of votes, and the resolution of electoral disputes. Understanding the RPO and its relationship to the constitutional framework is essential to any serious analysis of Bangladesh's electoral system.

The RPO's relationship to the constitution is complex. As a legislative instrument, the RPO is subordinate to the constitution and must conform to the constitutional requirements for elections and political representation. But the RPO also fills gaps in the constitutional framework, providing operational detail that the constitution does not specify, and its specific provisions have profound practical effects on the character of electoral competition. The constitutional

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provisions that establish the Election Commission's mandate and powers depend on the RPO to give that mandate and those powers operational content.

The most constitutionally significant provisions of the RPO concern the qualification and disqualification of candidates. The RPO imposes a series of requirements on persons wishing to stand for parliament, including requirements relating to citizenship, age, and criminal record. The criminal conviction disqualification provisions have been particularly contentious, as they have been used in highly politically motivated ways to disqualify opposition candidates while the governing party's candidates with equally or more problematic legal histories have faced no disqualification. The constitutional requirement that disqualification provisions must be applied consistently and impartially, derived from Article 27's equal protection guarantee, has been repeatedly violated in practice.

The RPO's provisions on electoral campaigning reflect a further dimension of the constitutional framework's inadequacy. Campaign finance regulation, while formally provided for in the RPO, has been so weakly enforced as to be practically meaningless. Candidates and political parties routinely spend amounts far in excess of the legally prescribed limits, and the Election Commission has rarely if ever imposed effective sanctions for these violations. The result is an electoral environment in which money plays a decisive role in determining who can mount a credible candidacy, creating a systematic class bias in political representation that conflicts with the constitutional guarantee of equal citizenship.

6.2 Political Party Law and the Constitutional Framework for Party Competition

The constitutional and legal framework governing political parties in Bangladesh is remarkably thin given the central role that parties play in the functioning of the democratic system. The constitution itself makes very limited reference to political parties, with Article 70 being the most significant constitutional provision that directly addresses their role. The regulation of political parties is primarily left to ordinary legislation and to the administrative practice of the Election Commission.

The Election Commission Act, 2022, adopted in the final years of the Awami League government, provided a new statutory framework for the regulation of political parties, including registration requirements, provisions for maintaining party registers, and mechanisms for deregistering parties that violate electoral law. The Act was criticized by opposition parties as being designed to give the Commission powers that could be used against the opposition, and the constitutional question of whether party deregistration without judicial process violates the constitutional guarantee of freedom of association has not been definitively resolved.

The internal democracy of political parties is a constitutional question of fundamental importance that has received insufficient attention in both the constitutional framework and the reform debate. Bangladesh's two dominant political parties, the Awami League and the BNP, are characterized by extremely hierarchical organizational structures in which power is concentrated in the hands of a single leader, the party president or chairperson, who exercises near-absolute authority over candidate selection, organizational decisions, and political strategy. This internal

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authoritarianism within political parties has profound consequences for the character of the parliamentary democracy that those parties constitute when in government.

When the prime minister is also the unchallenged leader of the governing party, the constitutional separation between the executive authority of the government and the legislative authority of the parliament is undermined by the practical reality that the prime minister controls both the government and the party's parliamentary group. The members of parliament from the governing party cannot effectively challenge or hold accountable a prime minister who controls their future political careers through the candidate selection process. The prime minister's authority therefore extends to cover not merely the executive branch but the legislative branch as well, creating the condition of executive dominance that scholars of Bangladesh's constitutional system have repeatedly identified as one of its most dangerous structural features.

The July Charter's proposal to reform Article 70 addresses the symptom of this problem by removing the constitutional prohibition on independent voting by members of parliament. But the root cause, the concentrated authority of party leaders over candidate selection and organizational decisions, requires more fundamental reform of the internal democratic structure of political parties. The Charter's proposals for greater internal party democracy, including requirements for transparent candidate nomination processes, were among the less concretely specified provisions of the reform agenda, and their effective implementation will require detailed legislative elaboration that goes beyond the relatively general commitments of the Charter itself.

6.3 Digital Campaigning, Social Media, and the Constitutional Law of Electoral Communication

The emergence of digital campaigning and social media as central features of modern electoral competition raises constitutional questions that Bangladesh's existing electoral law framework is poorly equipped to address. The constitutional guarantee of freedom of expression in Article 39, which encompasses political speech including electoral communication, must be balanced against the constitutional values of electoral integrity and equal opportunity that require regulation of campaign communications in the public interest.

Digital campaigning raises a series of specific constitutional challenges. The use of social media platforms to spread political disinformation represents a direct threat to the deliberative foundations of democratic elections, and the constitutional question of whether the state may regulate disinformation without violating freedom of expression is one that courts around the world are currently grappling with. The regulation of digital advertising by political parties and candidates raises questions about campaign finance law and the application of expenditure limits to online spending that existing RPO provisions, drafted before the digital era, do not address.

The Election Commission's new authority over digital campaigning, provided by the 2025 RPO amendments, represents a significant expansion of its regulatory mandate. But the constitutional framework for exercising that authority has not been fully developed, and the risk that digital campaign regulation could be used selectively to advantage the governing party remains a concern that requires constitutional attention. The development of clear constitutional principles

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for digital campaign regulation, including requirements of neutrality and equal treatment, transparent criteria for enforcement decisions, and judicial review of enforcement actions, is an urgent task for Bangladesh's constitutional development.

The right to uninterrupted internet service, proposed as a new fundamental right in the July Charter's reform package, represents a constitutionally significant extension of the constitutional framework for digital communication. If adopted, this provision would give constitutional status to internet access as a fundamental right, with implications for the constitutionality of government-ordered internet shutdowns of the kind that have been used in several countries, including instances in Bangladesh, to suppress political communication during periods of political crisis. The constitutional right to internet access would provide a legal basis for challenging such shutdowns, and would represent Bangladesh's alignment with the emerging international consensus that internet access is a fundamental enabler of constitutional rights including freedom of expression, freedom of assembly, and the right to political participation.

CHAPTER SEVEN: THE 2014 AND 2018 ELECTIONS - ANATOMY OF ELECTORAL FAILURE AND CONSTITUTIONAL COLLAPSE

7.1 The 2014 Elections: Competitive Democracy Abandoned

The tenth parliamentary elections of January 2014 represent the most dramatic single episode of electoral failure in Bangladesh's democratic history after the liberation war period. The decision by the BNP and its allies to boycott the elections, combined with the Awami League government's decision to proceed with the elections in the absence of a meaningful opposition, produced results that were constitutionally indefensible by any standard of democratic theory.

The background to the 2014 election crisis was the abolition of the caretaker government system through the Fifteenth Amendment in 2011. The BNP, which had led the political campaign for the caretaker system in the 1990s and which had governed under that system in 2001, demanded that the caretaker system be restored before any elections were held. The Awami League government refused, arguing that the Supreme Court's advisory opinion had established the unconstitutionality of the caretaker system and that the government was constitutionally prohibited from reinstating it. The resulting political deadlock was resolved, if that is the right word, by the Awami League's decision to hold elections in conditions that made it impossible for the opposition to participate meaningfully.

The 2014 elections resulted in the Awami League winning 154 of 300 constituencies without contest, as no other party fielded candidates in those constituencies. Of the remaining 146 constituencies, the election was contested by a small number of parties including the Jatiya Party of former President Ershad, which the Awami League had brought into a governing alliance, and a handful of smaller parties. The Awami League won 234 seats, giving it a parliamentary majority of historic proportions that owed nothing whatsoever to electoral competition.

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The constitutional consequences of the 2014 elections were immediate and severe. A parliament in which 154 of 300 members were elected without opposition cannot claim democratic legitimacy in any meaningful sense of that term. A government formed from such a parliament derives its authority not from the electoral will of the people but from its own organizational capacity to occupy constitutional offices in the absence of genuine competition. The Awami League government formed after the 2014 elections was, by any serious application of democratic theory, not a democratically elected government in the substantive sense, even though it was the product of constitutionally specified electoral procedures.

The international community's response to the 2014 elections was notable for its combination of formal recognition and substantive concern. Most governments and international organizations that had relations with Bangladesh continued to deal with the Awami League government as the government of Bangladesh, since recognition in international law depends on effective control rather than democratic legitimacy. But the response was accompanied by widespread expressions of concern about the lack of genuine electoral competition and calls for the restoration of conditions that would allow free and fair elections to be held. These calls were ignored by the Awami League government, which was able to consolidate its position through the exercise of state power rather than through the cultivation of genuine popular support.

7.2 The 2018 Elections: Electoral Fraud Systematized

The eleventh parliamentary elections of December 2018 represented a further descent from the already inadequate democratic standards of the 2014 elections. Unlike 2014, the 2018 elections were contested by the opposition, with the BNP and its allies participating under the umbrella of a coalition called Jatiya Oikyafront. But the electoral environment in which the opposition competed was so thoroughly manipulated that meaningful competition was effectively impossible.

The specific techniques of electoral fraud documented in the 2018 elections included what became known as "midnight voting," in which ballot boxes were filled with fraudulent votes on the night before polling day while polling stations were under the control of individuals associated with the Awami League. The practice was so widespread that by the time polling stations opened in the morning, large numbers of ballot papers had already been fraudulently cast. Opposition candidates and their agents were prevented from monitoring polling stations, violence was used against opposition supporters attempting to cast genuine votes, and the Election Commission, despite receiving numerous complaints during the polling process, took no effective action.

The results of the 2018 elections reflected these conditions. The Awami League and its coalition partners won 288 of 300 directly contested seats. The BNP, which had received approximately 33 percent of votes in the 2008 elections, won 7 seats. These results were not credible by any standard of independent electoral assessment. The European Union election observation mission, the most authoritative international assessment of the elections, concluded that the elections had not been free or fair, specifically noting the use of force against opposition supporters and candidates, the partisan conduct of electoral officials, and the failure of the Election Commission

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to investigate complaints. The mission's conclusion was that the elections had fallen short of international standards in several critical areas.

The constitutional significance of the 2018 elections extends beyond the specific irregularities documented in that election. The 2018 elections demonstrated conclusively that the abolition of the caretaker system, combined with a compromised Election Commission and a judiciary that had been brought under political control, had created conditions in which elections served as a mechanism for legitimating pre-determined outcomes rather than as genuine exercises of democratic choice. The constitutional machinery of elections was present in every formal respect: candidates stood, voters were enrolled, polling stations operated, votes were counted, results were announced. But the substantive conditions for genuine democratic choice were absent.

The constitutional theory of sham elections is relevant here. A sham election, in the usage developed by political scientists and constitutional scholars, is an election that maintains the formal apparatus of democratic procedure while systematically preventing the substantive conditions for genuine democratic choice. Sham elections are constitutionally significant not merely because they produce illegitimate governments but because they progressively delegitimize the entire constitutional framework through which they are conducted. Citizens who know that elections are fraudulent do not develop the civic culture of democratic participation that is essential to a functioning constitutional democracy. Instead, they develop cynicism about political institutions, disengagement from formal political processes, and potentially a willingness to support extra-constitutional forms of political action. The July 2024 uprising can be understood, in this perspective, as the political consequence of two consecutive sham elections that had exhausted the population's patience with constitutional forms that no longer served constitutional functions.

7.3 The Constitutional Jurisprudence of Electoral Fraud

The judicial response to electoral fraud in Bangladesh has been inadequate in ways that reflect both the specific failures of the judiciary's political independence, analyzed in Part Four of this textbook, and the broader structural weaknesses of Bangladesh's electoral dispute resolution framework.

Election petitions challenging the results of parliamentary elections are heard by the High Court Division of the Supreme Court under the Electoral Tribunal framework established by the RPO. The hearing of election petitions has been chronically slow, with cases sometimes taking years to be decided after the election to which they relate. A court that takes three years to decide an election petition challenging an election result has manifestly failed to provide the timely and effective remedy that electoral justice requires: by the time a successful election petition results in the unseating of a fraudulently elected member, the parliament in which they sat may already have completed its term and new elections may already have been held.

Beyond the timeliness problem, there is the political independence problem. Election petition courts that are themselves subject to political influence cannot be relied upon to decide petitions against the governing party with genuine impartiality. The systematic pattern of electoral fraud

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documented in the 2014 and 2018 elections was never effectively adjudicated by Bangladesh's courts, not because no petitions were filed but because the judicial system lacked the independence and the institutional culture to provide genuine remedies for systematic violations of electoral law.

The development of a genuinely independent electoral judicial system is therefore one of the most important institutional reforms that Bangladesh's constitutional reform process must address. The establishment of a specialized electoral court with its own judicial personnel, insulated from the general judicial appointment process that has been the mechanism through which political influence over the judiciary has been exercised, would represent a significant structural reform. The provision of expedited procedures, including strict time limits for the filing and hearing of election petitions, is equally important. And the constitutional protection of the electoral tribunal's jurisdiction against interference by the executive branch would provide the institutional independence that effective electoral justice requires.

CHAPTER EIGHT: THE FEBRUARY 2026 ELECTIONS AND REFERENDUM - A NEW CONSTITUTIONAL MOMENT

8.1 The Electoral Environment: From Authoritarianism to Competitive Democracy

The elections of February 12, 2026 represented the most significant moment in Bangladesh's electoral history since the restoration of democracy in 1991. They were held against the backdrop of the extraordinary political transformation triggered by the July 2024 uprising that removed the Awami League from power after fifteen years of increasingly authoritarian rule, and they were accompanied by the first national constitutional referendum in Bangladesh's history, in which citizens were asked to endorse a comprehensive package of constitutional reforms.

The February 2026 parliamentary elections and national referendum represented a critical juncture for Bangladesh's democratic and constitutional order. For the first time since the caretaker government system was abolished in 2011, the electoral process was conducted under an interim government framework. International Foundation for Electoral Systems This restoration of caretaker-style oversight of the electoral process, even in the informal and improvised form of the Muhammad Yunus-led interim government rather than the formally constitutionalized Thirteenth Amendment mechanism, represented a recognition of the fundamental lesson of Bangladesh's recent electoral history: that genuinely competitive elections require institutional arrangements that separate the administration of the electoral process from the political forces competing in it.

The legal framework governing the February 2026 parliamentary elections and national referendum was based on the Constitution of the People's Republic of Bangladesh and a series of amendments and ordinances adopted between 2023 and 2025, including amendments to the Representation of the People Order that expanded the Bangladesh Election Commission's powers to suspend polling and results, order re-polls, regulate digital campaigning and administer overseas voting. International Foundation for Electoral Systems These expansions of the Election

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Commission's powers addressed some of the specific enforcement deficits that had enabled the systematic fraud of the 2018 elections, and their inclusion in the legal framework for the 2026 elections represented a recognition that effective electoral integrity requires not merely formal independence but genuine enforcement capacity.

The political environment of the 2026 elections differed fundamentally from that of any previous Bangladeshi election since 2008. The Awami League, which had dominated Bangladesh's political landscape for fifteen years, did not participate in the elections, with Sheikh Hasina in exile and the party facing legal proceedings related to the events of the July 2024 uprising. The political field was therefore more genuinely competitive than it had been in any election since 2001, with the BNP as the dominant political force but facing competition from the newly formed National Citizen Party, which had been organized from the student leaders of the July 2024 uprising, and from a range of other parties including Jamaat-e-Islami and its allied formations.

8.2 The Constitutional Referendum: Design, Implementation, and Results

A constitutional referendum took place in Bangladesh on 12 February 2026, alongside the general election. Voters were asked about the provisions of the July Charter and related amendments to the Constitution of Bangladesh. The Yes vote passed in the referendum, with 68% votes in favor on a turnout of 60%. Wikipedia

The referendum represented an unprecedented exercise of direct democratic constitutional authority in Bangladesh's constitutional history. Never before had the Bangladeshi electorate been asked directly to endorse or reject constitutional reform proposals, and the decision to hold the referendum demonstrated a recognition that constitutional changes of the magnitude proposed in the July Charter required a form of popular authorization that went beyond the ordinary parliamentary amendment process, regardless of whether that parliamentary process was itself formally correct.

On 12 February 2026, voters in Bangladesh cast ballots in concurrent parliamentary elections and a constitutional referendum held under the Interim Government. While the Bangladesh Nationalist Party secured a two-thirds supermajority and 61% of voters endorsed the reform package, the referendum's ambiguously framed questions left unclear which of the July Charter's proposals were actually approved and what binding force they carry. ConstitutionNet

The ambiguity of the referendum questions has been identified by constitutional scholars as a significant problem for the post-referendum implementation process. The ballot paper for the referendum asked voters four questions, as determined by the interim government, and voters could not respond to each question separately, being instead required to answer all four together. These questions appeared to reflect at least 20 out of the 47 proposals contained in the Charter, but it was unclear what the electorate voted for with respect to the remainder. ConstitutionNet

This ambiguity is constitutionally significant for several reasons. A referendum that does not allow voters to express differentiated preferences on different reform proposals produces a mandate that is difficult to interpret with precision. The question of which specific provisions of

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the July Charter received the electorate's endorsement, and therefore carry the stronger democratic legitimacy that referendum approval provides, remains genuinely unclear as a result of the all-or-nothing structure of the referendum ballot. The post-referendum implementation process will need to resolve this ambiguity, and the manner in which it does so will reflect the political dynamics between the BNP government, which has a two-thirds parliamentary majority, and the reform movement represented by the NCP and its allies, which demands rapid and comprehensive implementation of the Charter.

The newly elected members of parliament from the BNP did not take the second oath binding them to respect and implement the July National Charter 2025, prompting criticism from members of Jamaat and its ally, the National Citizen Party. A two-thirds majority BNP has the mandate to shape how reforms are implemented, and it argues that any structural change must rest on clear constitutional procedures or risk being struck down by the courts. Al Jazeera

The BNP's refusal to take the Charter oath represents a significant political signal about the party's attitude toward the comprehensive implementation of the July Charter reforms. It suggests that the BNP, while publicly committed to the Charter's adoption, intends to exercise its parliamentary majority to interpret and implement the Charter's provisions in ways that reflect its own institutional interests rather than the comprehensive reform agenda envisioned by the Constitutional Reform Commission and the July Charter process. This tension between the BNP's democratic mandate as the newly elected government and the reform mandate of the July Charter and the referendum will be one of the central constitutional dramas of Bangladesh's political life over the next several years.

8.3 The Proportional Representation Controversy and its Constitutional Implications

One of the most contested aspects of the July Charter's reform package is the proposal for a proportionally elected upper house, which has been the focus of intense political disagreement between the BNP on one side and Jamaat-e-Islami and the National Citizen Party on the other.

The BNP wishes to retain the system of first-past-the-post, but the July Charter recommends that the upper house be filled with representatives elected according to the proportional representation electoral system, which would give parties a share of seats more in line with their share of overall votes. Forming the upper house in line with the first-past-the-post system, by contrast, would put the BNP at an advantage due to the large proportion of seats it won in parliament. The BNP favours forming the upper house in proportion to parliamentary seats, while Jamaat and the NCP prefer a system of proportional representation. Resolving this dispute remains a key challenge. Al Jazeera

The constitutional dimension of this dispute goes well beyond the immediate political interests of the parties involved. The choice between proportional representation and first-past-the-post for the upper house reflects fundamentally different theories of democratic representation and of the constitutional function of a bicameral legislature.

If the upper house is formed in proportion to parliamentary seats rather than votes, it will essentially replicate the composition of the lower house, with the dominant party in the lower

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house also dominating the upper house. This would make the upper house an appendage of the majority party rather than a genuinely distinct constitutional institution capable of providing an independent check on the lower house and the government it produces. The constitutional case for bicameralism, which has been extensively developed in the comparative constitutional literature by scholars including George Tsebelis and Jeannette Money, rests precisely on the idea that the two chambers of a bicameral legislature will have different compositions that reflect different representational principles, creating the institutional conditions for deliberative friction that produces better legislative outcomes than either chamber alone would achieve.

If the upper house is formed by proportional representation of votes, it will reflect the full distribution of political support in the electorate rather than the magnified majority that the first-past-the-post system produces in the lower house. This means that parties like the NCP, which may win fewer lower house seats than their vote share would suggest, will be better represented in the upper house. It also means that the BNP, despite its two-thirds lower house majority, would have a smaller representation in the upper house relative to its vote share than its lower house dominance might suggest. The BNP's resistance to proportional representation for the upper house therefore reflects rational political self-interest, but it conflicts with the constitutional purpose of bicameralism and with the democratic principle that legislative representation should accurately reflect the distribution of political opinion in the electorate.

The resolution of this dispute will be one of the first major constitutional tests of the BNP government's commitment to genuine constitutional reform as opposed to constitutional reform that serves its political interests. The constitutional reform process has created clear expectations about the proportional representation composition of the upper house, and a unilateral BNP decision to substitute a different composition mechanism would represent a significant departure from the Charter's mandate and would likely generate the kind of political conflict that could undermine the entire reform process.

CHAPTER NINE: THE CONSTITUTIONAL THEORY OF ELECTORAL SYSTEMS - PROPORTIONAL REPRESENTATION, MAJORITARIANISM, AND THE QUEST FOR DEMOCRATIC LEGITIMACY

9.1 Theoretical Frameworks for Evaluating Electoral Systems

The choice of electoral system is among the most consequential decisions in constitutional design, with profound implications for the character of political representation, the structure of party competition, the behavior of elected officials, and the overall quality of democratic governance. The comparative politics literature on electoral systems, developed over decades by scholars including Douglas Rae, Arend Lijphart, G. Bingham Powell, and Pippa Norris, provides a rich body of theoretical and empirical analysis that is directly relevant to Bangladesh's electoral reform debate.

The foundational distinction in electoral system theory is between majoritarian and proportional systems. Majoritarian systems, of which first-past-the-post is the clearest example, are designed

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to produce decisive electoral outcomes in which one party or coalition wins a clear parliamentary majority that enables stable governance. Proportional systems are designed to ensure that the distribution of parliamentary seats corresponds closely to the distribution of electoral support among competing parties, typically at the cost of clear majority outcomes and with the likely consequence of coalition governments.

Arend Lijphart's influential Patterns of Democracy, first published in 1984 and substantially revised in subsequent editions, developed a comprehensive comparative analysis of the differences between majoritarian and consensus democracies that has become one of the central texts in comparative constitutional theory. Lijphart demonstrated empirically that consensus democracies, which typically use proportional representation and produce coalition governments, tend to outperform majoritarian democracies on a wide range of indicators of democratic quality including women's political representation, voter turnout, protection of minority rights, and economic equality. Majoritarian democracies tend to be more decisive in policy-making but less inclusive in political representation and less constrained in the exercise of governmental power.

Lijphart's analysis has been challenged on various grounds, including the selection of cases, the measurement of the variables, and the causal claims about the effects of electoral systems versus other institutional factors. But its core insight, that the choice of electoral system has systematic effects on the character of democracy that go well beyond the narrow question of how votes are translated into seats, has been widely accepted and provides an important framework for evaluating Bangladesh's electoral reform choices.

For Bangladesh specifically, the case for introducing proportional representation for at least part of the legislature rests on several grounds beyond Lijphart's general theoretical framework. Bangladesh's first-past-the-post system, operating in the context of a deeply polarized two-party system with a history of electoral manipulation by incumbents, has produced particularly extreme distortions between vote share and seat share that have enabled one-party parliamentary dominance disproportionate to actual popular support. The introduction of a proportionally elected upper house would create a legislative institution that more accurately reflects the full distribution of political opinion in Bangladesh, would give parties with significant popular support but limited geographic concentration a meaningful legislative presence, and would provide a structural check on the dominance of a single party in the lower house.

9.2 Mixed Electoral Systems and Constitutional Design

The proposal in the July Charter for a bicameral legislature with first-past-the-post elections for the lower house and proportional representation for the upper house represents a form of mixed electoral system that has parallels in a number of constitutional systems around the world. The German mixed-member proportional system, the Japanese and South Korean systems of parallel voting, and the electoral arrangements of various other parliamentary democracies provide comparative models for understanding how mixed electoral systems can balance the competing demands of representational accuracy and governmental stability.

The constitutional design of a mixed electoral system must address several specific technical questions that have significant constitutional implications. The relationship between the two

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chambers in terms of legislative authority is the most fundamental of these questions. If the lower house is constitutionally dominant, able to override the upper house on most legislative matters, the upper house's proportional composition matters less for the overall character of governance, since the governing party's lower house majority can override upper house objections on most questions. If the upper house has a genuine constitutional veto over important categories of legislation, including constitutional amendments, its proportional composition becomes highly significant, since it means that even a government with a large lower house majority cannot amend the constitution without the consent of a body that reflects a broader range of political opinion.

The July Charter's proposal that constitutional amendments require a two-thirds majority in the lower house and a simple majority in the upper house gives the upper house a constitutional veto over amendments, making the upper house's composition directly relevant to the constitutional amendment process. If the upper house is composed proportionally of votes, then constitutional amendments would require the support of parties representing a genuinely broad cross-section of political opinion, creating exactly the kind of cross-party deliberation that was absent from the Fifteenth Amendment's passage and that is essential to the legitimate development of Bangladesh's constitutional order.

9.3 Electoral Systems and Political Party Development

The choice of electoral system also has significant implications for the development of Bangladesh's political party system, and these implications are constitutional in the broadest sense because the character of the party system is a central determinant of the quality of constitutional democracy.

Bangladesh's two-party dominant system, in which the Awami League and the BNP have alternated in power with occasional interruptions since the restoration of democracy in 1991, is partly a product of the first-past-the-post electoral system, which systematically disadvantages smaller parties and creates strong incentives for voters to concentrate their support on the major parties to avoid wasting their votes. The introduction of proportional representation, even for only the upper house, would create space for the development of a richer and more diverse party system in which parties other than the two dominant ones could develop a sustained political presence and legislative voice.

The constitutional implications of a more diverse party system are significant. In a system where two highly polarized parties dominate political life, constitutional governance tends to be organized around the bitter rivalry between those two parties, and constitutional norms and institutions are captured by that rivalry. In a more diverse party system, the existence of multiple parties with different political orientations and different constituencies creates the possibility of more varied political coalitions, more genuine deliberation about policy, and a less binary and more nuanced public discourse about constitutional and political questions. The July Charter's proposal for proportional representation in the upper house represents, in this perspective, not merely a technical electoral reform but a constitutional design choice aimed at fostering a healthier democratic culture.

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The development of smaller and newer parties, including the National Citizen Party that emerged from the July 2024 uprising, in a more hospitable electoral environment could represent an important contribution to Bangladesh's constitutional health. The NCP's emergence as a significant political force represents a generational renewal of Bangladesh's political leadership that could contribute to the reconstitution of a political culture more committed to constitutional norms and less captured by the dynastic politics of the Awami League and BNP families. Whether this potential is realized depends partly on the electoral system design choices that are being made in the current reform process.

CHAPTER TEN: CONSTITUTIONAL EMERGENCY POWERS, ELECTORAL CRISIS MANAGEMENT, AND THE RELATIONSHIP BETWEEN SECURITY AND DEMOCRACY

10.1 Constitutional Emergency Provisions and their Electoral Implications

Bangladesh's constitutional framework includes provisions governing emergency situations that have direct relevance to the conduct of elections and the protection of electoral rights. Articles 141A through 141C of the constitution establish a framework for the declaration and operation of constitutional emergencies, under which the fundamental rights guarantees of Part III may be suspended, with the exception of certain specified rights including the right against self-incrimination and the protection against retrospective criminal legislation.

The emergency provisions are directly relevant to electoral law for two reasons. First, constitutional emergencies have historically been used in Bangladesh as a mechanism for postponing elections or suspending the constitutional electoral calendar, as happened during the military-backed caretaker government of 2007 to 2008. Second, the suspension of fundamental rights during emergencies raises the specific question of whether electoral rights, including the right to participate in free and fair elections, are among the rights that may be legitimately suspended during a constitutional emergency.

The constitutional theory of emergency powers, developed by scholars including Oren Gross, Fionnuala Ni Aolain, Clinton Rossiter, and Carl Schmitt in his controversial analysis of the state of exception, provides a rich framework for analyzing these questions. The core tension in emergency powers theory is between the need for effective governmental response to genuine crises, which may require temporary departure from normal constitutional constraints, and the risk that emergency powers will be abused as a mechanism for the indefinite suspension of constitutional governance under the pretext of crisis management. Bangladesh's experience with the military-backed caretaker government of 2007 to 2008 provides a particularly instructive illustration of this risk.

The constitutional safeguards against abuse of emergency powers, both in Bangladesh's existing framework and in the reformed framework proposed by the July Charter, are insufficient in their current formulation. The requirement of parliamentary approval for emergency declarations does not provide meaningful protection when the parliament that must provide approval is itself the

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product of contested elections and lacks genuine independence from the executive. The development of more robust constitutional safeguards against emergency abuse, including time limits, mandatory judicial review, and specific protection of electoral rights even during emergencies, is an important task for the current constitutional reform process.

10.2 Electoral Violence and the Constitutional Protection of Political Participation

Electoral violence represents one of the most serious practical threats to the constitutional right of political participation in Bangladesh and has been a persistent feature of the electoral environment throughout the country's democratic history. The use of physical violence to suppress electoral competition, intimidate voters and candidates, prevent access to polling stations, and manipulate the electoral outcome is not merely a law enforcement problem but a constitutional violation of the most fundamental kind, since it prevents the exercise of the sovereign power that the constitution vests in the people.

Constitutional theory offers several frameworks for analyzing electoral violence and the state's obligations to prevent and remedy it. The positive obligation theory, developed in the context of human rights law by scholars including Alastair Mowbray and Andrew Clapham, holds that constitutional rights impose positive as well as negative obligations on the state: the state is not merely required to refrain from violating constitutional rights itself, but is also required to take effective measures to prevent private actors from violating those rights. Applied to electoral violence, the positive obligation theory requires the state to deploy effective measures to prevent violence against voters, candidates, and electoral workers, and to provide effective remedies when such violence occurs.

Bangladesh's record on the positive obligation to prevent electoral violence has been consistently poor. The state's apparatus of law enforcement has been repeatedly complicit in electoral violence, either by failing to protect opposition voters and candidates from violence by ruling party supporters, or by actively participating in such violence. The constitutional question of the accountability of state actors for electoral violence has been inadequately addressed by Bangladesh's courts, partly because of the political pressures that have compromised judicial independence in electoral matters.

The reform proposals advanced in the context of the July Charter and the current constitutional reform process address electoral violence primarily through measures designed to strengthen the Election Commission's enforcement powers and to insulate the law enforcement apparatus from political direction during election periods. These are important reforms, but they do not fully address the constitutional accountability framework for past electoral violence and for the officials who facilitated or participated in it. The development of a comprehensive constitutional accountability framework for electoral violence, including both prospective preventive measures and retrospective accountability mechanisms, is an important task for Bangladesh's constitutional reform process.

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CHAPTER ELEVEN: LOCAL GOVERNMENT ELECTIONS AND THE CONSTITUTIONAL FRAMEWORK OF DEMOCRATIC DECENTRALIZATION

11.1 The Constitutional Basis of Local Government

Bangladesh's constitution provides for a system of local government that is constitutionally mandated but whose specific design is left primarily to ordinary legislation. Article 59 requires that local government in every administrative unit of the Republic shall be entrusted to bodies composed of persons elected in accordance with law. Article 60 grants Parliament the power to confer powers on local government bodies, including powers to impose taxes and to prepare and maintain local government plans, for administration and economic development.

The constitutional commitment to local government is philosophically grounded in the principle of subsidiarity, the idea that governmental decisions should be made at the lowest level of authority that is competent to make them effectively. Subsidiarity, which has been developed as a constitutional principle primarily in the context of European Union law and in federal constitutional systems, reflects a recognition that local governance can be more responsive to the specific needs and preferences of local communities than central governance, that it promotes political participation by creating sites of democratic engagement closer to citizens' daily lives, and that it develops the civic culture and political capacity that is essential to a functioning constitutional democracy at all levels.

The specific constitutional framework of local government elections in Bangladesh has been a subject of sustained constitutional controversy throughout the country's history. Local government elections have been conducted with varying degrees of regularity and political openness. During periods of military rule, local government bodies were often staffed by appointed rather than elected officials. During periods of democratic governance, local government elections have been held but with patterns of partisan capture that have reflected the broader pathologies of Bangladesh's electoral environment. The practice of appointing government-affiliated persons as administrators of local government bodies in the absence of elected local governments has been a persistent constitutional problem, violating the constitutional mandate for elected local governance without any constitutional authorization for the appointment of non-elected administrators.

11.2 Local Government Reform and the Constitutional Framework

The July Charter's proposals for local government reform represent an important dimension of the overall constitutional reform agenda that has received less attention in the public debate than the more prominent national-level institutional reforms. The Charter's proposals for greater local government autonomy, clearer delineation of local government powers and responsibilities, and strengthened mechanisms for local government accountability, address a dimension of Bangladesh's democratic deficit that has been largely invisible in the national-level constitutional debate.

The constitutional theory of local government reform must address the relationship between national democratic accountability, which operates through the parliamentary system and

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national elections, and local democratic accountability, which operates through local government elections and local deliberative processes. A constitutional system that is formally democratic at the national level but that permits the central government to override, dissolve, or effectively control local government bodies at will is not genuinely committed to democratic decentralization as a constitutional principle. The development of constitutional protections for local government autonomy, including specified powers that local governments can exercise without central government approval and specified protections against arbitrary dissolution, is an important element of a genuinely decentralized constitutional framework.

The financial dimension of local government autonomy is equally important. Local governments that are financially dependent on grants from the central government lack the resources and the independence to provide genuine local governance. The constitutional provision of defined local tax powers, combined with mechanisms for equalizing fiscal capacity among local governments with different revenue bases, is essential to making local government a genuinely autonomous institution rather than merely an administrative arm of the central government.

The Chittagong Hill Tracts, which has its own specific institutional arrangements under the Peace Accord of 1997, including the Hill District Councils and the Regional Council, represents the most developed example of a locally differentiated governance structure in Bangladesh. The constitutional entrenchment of these specific arrangements, and the development of constitutional principles that would protect them against unilateral revision by the national government, is one of the most important local government reform priorities that the current constitutional reform process must address.

CHAPTER TWELVE: CONSTITUTIONAL REFORM OF THE ELECTORAL SYSTEM - A COMPREHENSIVE FRAMEWORK FOR ASSESSMENT AND PRESCRIPTION

12.1 Evaluating Bangladesh's Electoral Reform Proposals: The Constitutional Standard

The comprehensive evaluation of Bangladesh's electoral reform proposals requires a constitutional standard against which specific reforms can be assessed. The analysis developed throughout this part of the textbook suggests the following constitutional benchmarks for an adequate electoral system:

The electoral system must produce genuinely competitive elections in which parties and candidates of all significant political orientations have a reasonable opportunity to contest on terms that are not systematically distorted by incumbent advantages. This requires, at minimum, an electoral administration that is genuinely independent of the governing party, a legal framework that is applied impartially regardless of the political affiliation of the parties and candidates to whom it applies, and a security environment that allows voters, candidates, and party workers to exercise their electoral rights without fear of violence or intimidation.

The electoral system must translate the distribution of popular political support into legislative representation in a manner that is broadly proportionate, that does not systematically exclude

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significant minorities from legislative voice, and that does not enable any single political force to exercise legislative dominance that is wildly disproportionate to its actual share of popular support. This standard does not require perfect proportionality, which no real-world electoral system achieves. But it does require that the degree of disproportionality be within bounds that do not fundamentally compromise the legislative representation of significant segments of the electorate.

The electoral system must provide effective mechanisms for the accountability of elected officials to their constituents between elections, including mechanisms of transparency that allow voters to evaluate the performance of their representatives, and mechanisms of sanction including recall, electoral defeat, and legal accountability that give voters genuine power to enforce their accountability claims. The constitutional provision of Article 70, by removing members of parliament's accountability to their constituencies when constituency opinion conflicts with party direction, undermines this element of electoral accountability.

The electoral system must be administered by institutions whose independence, competence, and integrity are sufficient to ensure that the rules of electoral competition are applied consistently and impartially, that violations are effectively remedied, and that the results of elections credibly reflect the actual preferences of the electorate. This requires not only formal independence provisions in the constitutional and legislative framework but a genuine institutional culture of professional electoral administration that is insulated from political pressure.

12.2 Assessment of the July Charter's Electoral Reform Proposals

Against these constitutional benchmarks, the July Charter's electoral reform proposals represent a significant improvement over the existing framework, though important gaps and unresolved questions remain.

The July Charter proposes that the caretaker system will be reinstated and formed by consensus among the ruling party, the main opposition and the second opposition parties. Bicameralism will be introduced with the Upper House consisting of 100 seats proportionally distributed among the votes of the elected parties. Reserved seats for women in the lower house will be gradually increased up to 100 seats. The Deputy Speaker of the Jatiya Sangsad will be elected from the opposition party. Article 70 will be abolished, which prohibits floor crossing. Any major international treaty related to the national security will require approval from both houses. Wikipedia

The restoration of the caretaker system addresses the most fundamental constitutional deficiency of the existing framework: the absence of any mechanism for insulating electoral administration from partisan government control. Whether the restored caretaker system will be effective depends on the specific design of the chief adviser selection process and the specific powers and responsibilities of the caretaker government during the electoral period. The Charter's selection committee mechanism is an improvement over the Thirteenth Amendment's sole reliance on the retired Chief Justice, but its effectiveness in producing genuinely neutral caretaker governments will depend on the political culture within which it operates and on whether the major political parties demonstrate the good faith that the consensus-based selection process requires.

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The Election Commission will be formed under the supervision of the Speaker, Deputy Speaker, Prime Minister, Leader of the Opposition, and the Chief Justice. Wikipedia This multi-stakeholder appointments process addresses the structural deficiency of purely executive appointments, but its effectiveness will depend on whether the process is genuinely deliberative rather than merely procedural, and on whether the persons appointed through it develop and maintain genuine institutional independence rather than loyalty to the political forces that appointed them.

The abolition of Article 70 for most legislative matters represents an important constitutional reform that would significantly increase the independence of parliament from executive control. But the specific drafting of the reform, including the definition of the exceptions for budget and confidence votes and the mechanism for enforcing the prohibition on the compelled vacation of seats for free votes, requires careful attention to avoid recreating through more subtle means the same constitutional pathology that explicit Article 70 enforcement has produced.

Electoral boundary delimitation powers will be taken from the Bangladesh Election Commission and vested in a specialized committee set by the parliament. Wikipedia This reform addresses the conflict of interest created by the Election Commission's simultaneous roles as electoral administrator and constituency boundary determiner, but it creates a new question about the composition and independence of the parliamentary delimitation committee. If the delimitation committee is dominated by the governing party, the gerrymandering risk that electoral boundary manipulation represents does not disappear merely by removing it from the Commission's jurisdiction.

12.3 Unresolved Constitutional Questions in the Reform Process

Several important constitutional questions remain unresolved in the current electoral reform debate and require careful attention in the implementation process that the BNP government is now constitutionally committed to undertaking.

The first unresolved question concerns the relationship between the July Charter's referendum mandate and the BNP's parliamentary majority power to determine the specific constitutional texts implementing the Charter's commitments. The BNP has a two-thirds majority and the mandate to shape how reforms are implemented, and it argues that any structural change must rest on clear constitutional procedures or risk being struck down by the courts. Al Jazeera But the political mandate of the July Charter, endorsed by 68 percent of voters in the referendum, also represents a constitutional constraint on the manner in which the BNP exercises its parliamentary majority. The question of where the boundary lies between legitimate parliamentary interpretation of Charter commitments and illegitimate deviation from those commitments will be one of the central constitutional controversies of the next several years.

The second unresolved question concerns the constitutional protection of the restored caretaker system against future parliamentary abolition. A national referendum will be required to reform the caretaker government system. Wikipedia This proposal, if enacted as a constitutional amendment, would protect the caretaker system against the kind of one-party parliamentary abolition that produced the Fifteenth Amendment's catastrophic removal of the system in 2011.

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But the specific legal form of this protection, whether it takes the form of an explicit constitutional provision requiring referendum approval for caretaker system amendments, or a broader constitutional principle protecting the caretaker framework through the basic structure doctrine, has not been fully resolved.

The third unresolved question concerns the representation of the Awami League and its supporters in the reformed constitutional framework. The Awami League's absence from the February 2026 elections means that approximately one-quarter to one-third of the Bangladeshi electorate, which has historically supported the party, has no direct representation in the parliament that will enact the constitutional amendments implementing the July Charter. The constitutional legitimacy of constitutional amendments adopted without the participation of such a significant segment of the electorate is a question that deserves serious consideration, even if the Awami League's own past conduct in imposing constitutional changes through its parliamentary majority without cross-party deliberation makes its claims to be heard in the reform process difficult to advance with full moral authority.

CHAPTER THIRTEEN: COMPARATIVE CONSTITUTIONAL PERSPECTIVES ON ELECTORAL REFORM - LESSONS FROM SOUTH ASIA AND BEYOND

13.1 The Indian Electoral System: Parallels, Divergences, and Lessons

India provides the most directly relevant comparative constitutional model for Bangladesh's electoral reform debate, given the shared legal inheritance, the similar political and social context, and the long history of constitutional interaction between the two countries. India's experience with first-past-the-post elections in a multi-party competitive democracy offers both cautionary lessons and constructive precedents for Bangladesh's own electoral reform process.

The Indian Electoral Commission has been a significantly more effective institution than its Bangladeshi counterpart, partly because of the constitutional framework in which it operates and partly because of the leadership provided by successive Chief Election Commissioners who have asserted the Commission's constitutional independence with vigor and credibility. The transformation of the Indian Election Commission into a genuinely powerful and independent institution under Chief Election Commissioner T.N. Seshan in the 1990s demonstrates that constitutional independence can be made real by institutional leadership even without fundamental structural reform, a lesson with obvious relevance to Bangladesh's reform debate.

At the same time, India's first-past-the-post electoral system has produced its own forms of representational distortion, with parties routinely winning parliamentary majorities on pluralities of votes that may represent far less than fifty percent of the national electorate. The Bharatiya Janata Party's extraordinary parliamentary dominance since 2014, achieved on vote shares in the forty-to-forty-five percent range, illustrates the disproportionality that the Indian system produces at the national level, even if that disproportionality has been somewhat moderated by the complexity of India's multi-party competitive environment. Bangladesh's simpler two-party

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dominant system produces even more extreme disproportionality under first-past-the-post, as the analysis of the 2008 election results demonstrated.

India's experience with reserved seats for women at the state and local government levels, where thirty percent reservation has been constitutionally mandated since the seventy-third and seventy-fourth constitutional amendments of 1992, provides important comparative evidence about the effects of reservation mechanisms on women's political participation. The evidence from India suggests that reservation at the local government level has significantly increased women's political engagement and has produced meaningful changes in local governance priorities, but that the indirect election mechanism for filling reserved seats at the national level has been less effective in producing genuine substantive representation. The constitutional requirement for reserved seats for women in local government has been particularly effective in states where women have been able to contest and win seats in direct elections rather than merely being appointed to reserved positions through party patronage.

13.2 Nepal's Federal Constitution and Electoral System Reform

Nepal's 2015 constitution, which established a federal democratic republic after a decade of political transition, provides an important comparative model for Bangladesh's current constitutional reform process. Nepal's constitution introduced a mixed electoral system at the national level, combining first-past-the-post elections for 165 of the 275 House of Representatives seats with proportional representation for the remaining 110 seats. The proportional representation component is explicitly designed to ensure the representation of women, Dalits, indigenous peoples, and other marginalized communities, reflecting a constitutional commitment to inclusive representation that goes beyond what percentage quotas alone can achieve.

Nepal's experience with its mixed electoral system demonstrates both the potential and the limitations of hybrid approaches. The proportional representation component has successfully increased the parliamentary representation of previously marginalized communities, including Madhesi people, Janajati ethnic groups, and women, who are represented in the proportional seats at significantly higher rates than in the first-past-the-post seats. But the mixed system has also produced some of the coalition government instability that proportional representation systems are associated with, including frequent changes of government that have created governance challenges.

The Nepali experience also illustrates the constitutional complexity of implementing federal decentralization in a previously centralized political system, which is relevant to Bangladesh's proposals for stronger local government. Nepal's three-tier federal structure, combining federal, provincial, and local government levels, required not only constitutional provisions establishing the structure but extensive legislative implementation, capacity building, and fiscal equalization to give federal principles practical effect. Bangladesh's reform process will face similar implementation challenges if it moves toward stronger constitutional protection for local government autonomy.

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13.3 Germany's Mixed-Member Proportional System and the Constitutional Architecture of Representation

Germany's mixed-member proportional electoral system, established under the 1949 Basic Law and subsequently modified through legislative amendments to the Federal Electoral Act, provides the most sophisticated and internationally influential model of a hybrid electoral system that combines constituency-level first-past-the-post elections with proportional representation correction mechanisms. Understanding the German system's design and its effects is essential to evaluating Bangladesh's own hybrid proposals.

Under the German mixed-member proportional system, voters cast two votes: one for a constituency candidate under first-past-the-post rules, and one for a party list. The constituency votes determine which individual candidates win seats, but the party list votes determine the overall proportion of Bundestag seats that each party receives. If a party wins more constituency seats than its proportional share of votes would entitle it to, the Bundestag is expanded to accommodate the additional seats, a feature known as overhang seats that has significantly complicated the system's operation in recent years by producing Bundestags substantially larger than the originally planned membership.

The German system's constitutional design reflects a specific commitment to both geographic representation, through the constituency seats, and proportional representation, through the party list seats. The resulting Bundestag is both geographically grounded, since approximately half its members represent specific constituencies to whose voters they are accountable, and proportionally representative, since the overall composition reflects the national distribution of party support. This combination addresses a key criticism of pure proportional representation, which can produce a legislature whose members are accountable only to their party rather than to any geographic constituency, while avoiding the extreme disproportionality of pure first-past-the-post systems.

The German system's application to Bangladesh's reform debate is instructive. The July Charter's proposal for a separate proportional upper house, while simpler than the German integrated mixed-member system, reflects a similar constitutional philosophy: that democratic representation requires both geographic accountability and proportional fairness. The German experience suggests that this combination can produce a highly legitimate and effective legislative system, but also that the specific technical design of the proportional component requires careful attention to avoid the complications produced by overhang seats and the other technical complexities that the German system has encountered.

CONCLUDING REFLECTIONS TO PART SIX

The electoral system is the mechanism through which a constitutional democracy renews its claim to legitimate authority, translates the sovereign power of the people into the concrete decisions of government, and provides citizens with the power to hold their rulers accountable. Bangladesh's constitutional history demonstrates with particular clarity the proposition that a

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constitution's democratic claims cannot be sustained if its electoral mechanisms are captured, corrupted, or manipulated by those in power. The devastating consequences of the Fifteenth Amendment's abolition of the caretaker system, the sham elections of 2014 and 2018, and the July 2024 uprising that was in significant part a response to the exhaustion of constitutional legitimacy, all testify to the centrality of genuine electoral integrity to the entire constitutional order.

The reform process of 2024 through 2026 has created a genuine opportunity to rebuild Bangladesh's electoral system on foundations that are more resistant to the forms of manipulation and capture that have characterized the country's electoral history. The July Charter's proposals for a restored caretaker system, a reformed Election Commission appointments process, the abolition of Article 70 for most legislative matters, a proportionally elected upper house, and increased women's representation represent a comprehensive and philosophically sophisticated reform agenda that, if genuinely implemented, would significantly strengthen Bangladesh's constitutional democracy.

But the implementation of these reforms will be the real test of the constitutional moment that the February 2026 elections and referendum have created. The BNP government's parliamentary dominance gives it the formal power to shape the implementation of the July Charter's commitments in ways that reflect its institutional interests as well as its constitutional obligations. The tensions between these interests, already visible in the dispute over proportional representation for the upper house and the BNP's failure to take the Charter oath, will be a defining feature of Bangladesh's constitutional politics over the next several years.

The theoretical and comparative constitutional analysis developed in this part of the textbook suggests that the resolution of these tensions in favor of genuine constitutional reform, rather than in favor of arrangements that merely give a different party the institutional advantages that the Awami League exploited so destructively, requires both institutional and cultural change. Institutional change means designing the specific mechanisms of the reformed electoral system in ways that genuinely distribute power, protect minority interests, and create accountability rather than merely substituting one form of dominance for another. Cultural change means developing a constitutional culture in which all significant political actors internalize the commitment to fair elections as a genuinely shared value rather than a principle to be invoked against opponents but abandoned when in power.

The constitutional theory of electoral integrity, developed through the philosophical traditions examined in this chapter from Rousseau's general will through Dahl's polyarchy to Habermas's deliberative democracy, points toward a vision of Bangladesh's electoral system as a genuine mechanism of popular self-governance rather than a sophisticated mechanism for legitimating elite authority. Achieving that vision will require sustained commitment from Bangladesh's political leaders, constitutional scholars, civil society, and citizens themselves. The educational and intellectual work of understanding why free and fair elections matter, what constitutional and institutional conditions are necessary to sustain them, and what the costs of their failure are for the entire constitutional order, is a contribution that a textbook like this one can and must make to the ongoing project of Bangladesh's constitutional self-realization.

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The seven parts that follow in this textbook will continue the examination of Bangladesh's constitutional framework across the remaining domains that a comprehensive commentary must address: emergency powers and constitutional crisis governance, local government and constitutional decentralization, constitutional property rights and economic governance, international law and constitutional practice, constitutional enforcement and the culture of constitutionalism, the specific reform agenda across all constitutional domains, and finally, the vision of Bangladesh's constitutional future that the current reform moment makes possible. Each of these domains connects to the electoral dimension analyzed in this part, since every aspect of constitutional governance ultimately depends for its effectiveness on the electoral accountability mechanism that translates citizen preferences into governmental authority and governmental performance into electoral consequences. A constitution that does not guarantee genuine elections cannot be a constitution in the full and meaningful sense of that term. Bangladesh is working, with more determination and more sophistication than at any previous moment in its constitutional history, to make its constitution a genuine one. The outcome of that work will determine whether the extraordinary sacrifice of the July 2024 uprising was the beginning of a genuine constitutional transformation or merely another episode in the long story of constitutional promise and political betrayal.

FURTHER READING AND KEY SOURCES FOR PART SIX

On the theory of democratic elections and electoral systems, students should consult Dahl, Robert, Polyarchy: Participation and Opposition (1971); Lijphart, Arend, Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries (2nd edition, 2012); Powell, G. Bingham, Elections as Instruments of Democracy: Majoritarian and Proportional Visions (2000); Norris, Pippa, Electoral Engineering: Voting Rules and Political Behavior (2004); and Rae, Douglas, The Political Consequences of Electoral Laws (1967).

On the philosophical foundations of democratic representation, students should consult Pitkin, Hanna, The Concept of Representation (1967); Phillips, Anne, The Politics of Presence (1995); Burke, Edmund, Speech to the Electors of Bristol (1774); Mill, John Stuart, Considerations on Representative Government (1861); and Habermas, Jurgen, Between Facts and Norms (1996).

On the caretaker government system and its constitutional implications, students should consult the judicial decisions in the Eighth Bench Reference case (Bangladesh Supreme Court, 2011); Hoque, Ridwanul, Judicial Activism in Bangladesh: A Democratic Paradox (2011); Malik, Shahdeen, The Constitution, Constitutionalism and Constitutionality in Bangladesh (2018); and the comparative analyses in Jacobsohn, Gary, Constitutional Identity (2010).

On electoral fraud, electoral justice, and the constitutional protection of electoral rights, students should consult Lehoucq, Fabrice, Electoral Fraud: Causes, Types, and Consequences (2003); Simpser, Alberto, Why Governments and Parties Manipulate Elections (2013); and Hartlyn, Jonathan and McCoy, Jennifer, Electoral Constraints and Regime Legitimacy in New Democracies (2006).

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On the Bangladesh Election Commission and its reform, students should consult the Constitutional Reform Commission's January 2025 report on electoral and constitutional institutions; Haque and Bisarya, July Charter and Constitutional Reforms in Bangladesh (ConstitutionNet, December 2025); the IFES election snapshot on the February 2026 elections and referendum; and the IRI Pre-Election Assessment Mission report (November 2025).

On the February 2026 elections and referendum specifically, students should consult the IFES Election Snapshot for the February 2026 elections; the International IDEA ConstitutionNet analysis by Sara Hossain (March 2026) on the need to return to a constitutional process; the Al Jazeera reporting on the referendum as a post-election flashpoint (February 2026); and the Wikipedia analysis of the 2026 Bangladeshi constitutional referendum.

On comparative electoral commission independence, students should consult the ACE Electoral Knowledge Network's comparative analysis of electoral management bodies; Mozaffar, Shaheen and Schedler, Andreas, The Comparative Study of Electoral Governance (2002); and Wall, Alan et al., Electoral Management Design: The International IDEA Handbook (2006).

On women's political representation and constitutional design, students should consult Dahlerup, Drude, Women, Quotas and Politics (2006); Krook, Mona Lena, Quotas for Women in Politics: Gender, Electoral Laws and Political Representation (2009); and the Inter-Parliamentary Union's annual report on women in national parliaments.

On the comparative constitutional analysis of Bangladesh's electoral system in its regional context, students should consult Riaz, Ali, Lived Islam and Islamism in Bangladesh (2008) and Bangladesh: A Political History Since Independence (2016); Ahmed, Nizam, The Bangladesh Legislature (2002); Hakim, Muhammad Abdul, The Constitutional Foundations of Bangladesh (2011); and the Research Square analysis by Baized et al., Bangladesh's Electoral System: Constitutional Structure, Legal Framework and the Impact of the July Charter (February 2026).

On the constitutional dimensions of the July Charter specifically as they relate to the electoral system, students should consult the full text of the July National Charter 2025 as signed on October 17, 2025; the July National Charter (Constitutional Amendment) Implementation Order 2025 promulgated on November 13, 2025; the National Consensus Commission's deliberation records as published in Bangladeshi media sources; and the Daily Star's comprehensive analysis, Yes, No and Confused: A Closer Look at the July Charter as the Referendum Nears (January 2026).

Students seeking the most current constitutional developments as of April 2026 should monitor the ConstitutionNet Bangladesh page, the I.CONnect constitutional blog, the Daily Star and Daily New Age coverage of the constitutional reform implementation process under the new BNP government, and the ongoing academic commentary by Bangladeshi constitutional scholars including Ridwanul Hoque, Asif Nazrul, and Sara Hossain.

End of Part Six

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Part Seven will examine: Constitutional Emergency Powers, Crisis Governance, and the Architecture of Exceptional State Authority in Bangladesh: From Martial Law Constitutionalism to the Reform of Emergency Provisions and the Constitutional Management of Political Crisis.

PART SEVEN

CONSTITUTIONAL EMERGENCY POWERS, CRISIS GOVERNANCE, AND THE ARCHITECTURE OF EXCEPTIONAL STATE AUTHORITY IN BANGLADESH: FROM MARTIAL LAW CONSTITUTIONALISM TO THE REFORM OF EMERGENCY PROVISIONS, THE SECURITIZATION OF LAW, AND THE CONSTITUTIONAL MANAGEMENT OF POLITICAL CRISIS

PREFACE TO PART SEVEN

Among the most revealing tests of any constitutional order's genuine commitment to the values it proclaims is what it does in a crisis. The great constitutional scholar Clinton Rossiter observed that constitutional dictatorship, meaning the temporary and legally authorized concentration of governmental power beyond normal constitutional limits in response to emergency conditions, is one of the oldest and most persistent features of governmental organization, known to the Romans, practiced by every modern state, and constitutionally rationalized in terms that vary across systems but share a common structural logic: that the ordinary constitutional rules designed for ordinary times must sometimes yield to emergency measures designed for extraordinary times, with the hope and expectation that once the emergency passes, the ordinary rules will be restored. This hope has been disappointed sufficiently often throughout history to generate one of the most important and contested areas of modern constitutional theory, the theory of emergency powers and their regulation.

Bangladesh's constitutional history with emergency powers is one of the most instructive, most disturbing, and most philosophically complex in the entire comparative constitutional literature. From the original constitution's deliberate omission of any emergency provisions, a choice reflecting the founders' experience of colonial and Pakistani abuse of emergency powers, through the repeated invocation of emergency and martial law in the turbulent years of the 1970s and 1980s, through the constitutional laundering of those extra-constitutional impositions through subsequent amendments, through the sophisticated securitization of law that developed under the Awami League's later years of governance, through the constitutional crisis and quasi-emergency conditions created by the July 2024 uprising and its aftermath, Bangladesh has lived with and through virtually every form of crisis governance that constitutional theory has analyzed. The cost, in lives, liberties, and constitutional legitimacy, has been enormous and is not yet fully calculated.

This seventh part of the textbook undertakes a comprehensive examination of emergency powers and crisis governance in Bangladesh's constitutional framework. The analysis proceeds across

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multiple dimensions: the theoretical foundations of emergency powers in constitutional thought, the specific constitutional provisions governing emergency in Bangladesh and their origins, the history of martial law and extra-constitutional governance and its constitutional laundering, the Special Powers Act and the broader tradition of preventive detention legislation as a form of quasi-emergency governance, the Awami League period's use of security legislation including the Digital Security Act and the Cyber Security Act as instruments of political control, the constitutional dimensions of the July 2024 uprising and the extraordinary constitutional measures taken in its aftermath, the comparative constitutional frameworks for emergency power regulation from around the world, and the reform proposals advanced by the current constitutional reform process for creating a more principled and rights-respecting framework for emergency governance.

CHAPTER ONE: THE CONSTITUTIONAL THEORY OF EMERGENCY POWERS - NECESSITY, EXCEPTION, AND THE PARADOX OF CONSTITUTIONAL DICTATORSHIP

1.1 The Ancient Paradox: Protecting the Constitution by Suspending It

The philosophical paradox at the heart of emergency powers law is one that has fascinated and troubled constitutional theorists for as long as serious constitutional thought has existed. The paradox can be simply stated: a constitution exists to limit the power of government and protect the rights of citizens, but an emergency may arise in which the application of those limits and the protection of those rights would prevent the government from taking measures necessary to preserve the constitutional order itself. The solution of temporarily suspending constitutional limits in order to preserve the constitution that those limits embody is logically coherent but practically dangerous, since the temporary suspension of constitutional constraints has a well-documented tendency to become permanent.

The Roman institution of the dictator, which provided the historical model for many subsequent theories of emergency powers, was specifically designed to address this paradox. When Rome faced a genuinely existential crisis, whether military, political, or social, the Senate could appoint a dictator who would exercise supreme authority over all aspects of government for a maximum period of six months. The dictator's appointment was constitutionally authorized, his powers were legally defined even if extremely broad, and his authority would automatically lapse at the end of the six-month period or sooner if the crisis was resolved. The Roman institution of the dictatorship thus represented an attempt to constitutionalize emergency authority, to bring the exercise of extraordinary governmental power within the framework of legally defined and temporally limited procedures, thereby preserving the essential constitutional character of the Roman Republic even during periods of crisis governance.

The success of this Roman experiment was, at best, partial. The constitutional dictatorship worked reasonably well as long as the dictators appointed were genuinely committed to the constitutional framework within which their authority was defined. But as the Roman Republic entered its period of terminal crisis, the constitutional dictatorship was subverted by figures who

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used the form of constitutional appointment to exercise powers that were unlimited in practice and indefinite in duration. Julius Caesar's appointment as dictator perpetuo, dictator in perpetuity, was the constitutional form through which the Roman Republic effectively ended, demonstrating that constitutional authorization of emergency powers is only as effective as the political culture that constrains its exercise.

Carl Schmitt's theory of the state of exception, developed primarily in Political Theology (1922) and Constitutional Theory (1928), represents the most influential and most disturbing twentieth-century engagement with the paradox of emergency powers. Schmitt's famous dictum that the sovereign is he who decides on the exception identifies emergency power with sovereignty itself: the capacity to declare an exception to the normal legal order and to determine the measures necessary to address it is the defining attribute of sovereign power. On Schmitt's account, the state of exception reveals the truth of constitutional order that normal times conceal, namely that behind every legal system stands a political will that cannot be fully captured by the system's own rules and that asserts itself precisely when those rules reach their limits.

Schmitt's theory has been subjected to extensive and important criticism, most influentially by Giorgio Agamben in State of Exception (2003), which extended and radicalized Schmitt's analysis to argue that the state of exception has become in the modern era not a temporary departure from normal legal order but a permanent feature of governmental operation, a zone of juridical indeterminacy in which the application of law and its suspension are no longer distinguishable. Agamben's analysis drew on examples from the internment of Japanese Americans during World War II, the detention of prisoners at Guantanamo Bay after September 11, and the emergency measures adopted by various European governments, but its theoretical framework is directly relevant to Bangladesh's experience of emergency governance.

The contrast between Schmitt's and Agamben's analyses of emergency powers and the liberal constitutionalist tradition, represented by thinkers including John Locke, William Rehnquist, and more recently Oren Gross and Fionnuala Ni Aolain, is one of the most important in contemporary constitutional theory. Liberal constitutionalists argue that emergency powers, while necessarily broad, must be constitutionally authorized, temporally limited, democratically accountable, and subject to judicial review. Gross and Ni Aolain, in Law in Times of Crisis: Emergency Powers in Theory and Practice (2006), developed a sophisticated framework for evaluating emergency measures against constitutional standards, arguing that even in the most extreme emergencies, the exercise of emergency power must satisfy requirements of necessity, proportionality, and accountability if it is to be considered constitutionally legitimate.

1.2 Derogation Theory and International Human Rights Law

The international human rights law framework for emergency powers provides a normative standard against which national emergency power regimes can be evaluated. The International Covenant on Civil and Political Rights, to which Bangladesh acceded in 2000, provides in Article 4 that in time of public emergency that threatens the life of the nation and the existence of which is officially proclaimed, states parties may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international

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law and do not involve discrimination solely on grounds of race, colour, sex, language, religion or social origin.

Article 4(1)'s requirements for a valid emergency derogation are exacting. The emergency must actually threaten the life of the nation, not merely create inconvenience or challenge for the government. The emergency must be officially proclaimed, creating a requirement of formal legal authorization that prevents the covert operation of emergency powers outside any legal framework. The measures taken must be strictly necessary for the purposes of the emergency, creating a proportionality requirement. And the measures must not involve prohibited discrimination, creating a requirement of equal treatment even in emergency conditions.

Article 4(2) identifies specific rights that may not be derogated from even in emergencies: the right to life, the prohibition on torture and cruel treatment, the prohibition on slavery, the prohibition on imprisonment for breach of contract, the prohibition on retrospective criminal legislation, the right to recognition as a person before the law, and freedom of thought, conscience, and religion. These non-derogable rights represent the international community's judgment about the absolute minimum of human dignity that no emergency can justify violating.

The Human Rights Committee's General Comment 29 on states of emergency, adopted in 2001, elaborated these requirements in important ways. The Committee specified that the existence of an emergency must be formally notified to other states parties, that the measures adopted must be the minimum necessary to address the emergency, and that even non-derogable rights may not be effectively nullified through derogatory measures that target them indirectly. The Committee also addressed the specific question of derogations that are used as a pretext for political repression, noting that emergency measures that are specifically targeted at opposition political activity, criticism of the government, or peaceful expression of dissent cannot meet the requirement of strict necessity even if the emergency itself is genuine.

Bangladesh's practice of emergency governance throughout its history has repeatedly failed to meet these international standards, as will be demonstrated in the historical analysis that follows. The repeated invocation of emergency powers for political rather than genuine security purposes, the use of emergency detention legislation against opposition politicians, journalists, and civil society activists, and the prolonged duration of emergency conditions far beyond any reasonable interpretation of strict necessity, all represent violations of Bangladesh's international obligations that compound the domestic constitutional violations they involve.

1.3 Theories of Constitutional Resilience and Democratic Backsliding

The most recent scholarship on emergency powers has developed the concept of constitutional resilience, the capacity of constitutional systems to maintain their essential character and their commitment to constitutional values under conditions of crisis and stress. Scholars including Kim Lane Scheppele, Rosalind Dixon, David Landau, and Samuel Issacharoff have argued that the central challenge facing constitutional democracies in the contemporary era is not the dramatic military coup or the openly authoritarian takeover but the subtler and more legally sophisticated process by which elected leaders use the forms of constitutional procedure,

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including emergency powers, security legislation, and incremental amendment, to concentrate power and dismantle the checks and balances that define constitutional democracy.

Kim Lane Scheppele's concept of the autocratic legalism, developed in a series of influential articles from 2018 onwards, captures this dynamic with particular precision. Scheppele argues that contemporary authoritarians, unlike their predecessors who typically exercised power through open coercion in violation of constitutional norms, systematically use law as an instrument of power concentration, employing constitutional amendments, emergency powers, and security legislation to create a legal framework that gives their authority the appearance of constitutional legitimacy while stripping away the substantive features of constitutional governance. The Hungary of Viktor Orban, which Scheppele has analyzed in the greatest detail, provides a particularly clear illustration of autocratic legalism, but the dynamics she identifies are recognizable in Bangladesh's constitutional history as well, particularly in the pattern of Awami League governance from 2009 to 2024.

David Landau's concept of abusive constitutionalism, developed in Abusive Constitutionalism (2013) and subsequent work, focuses specifically on the use of constitutional amendment as a mechanism of democratic backsliding, arguing that governing parties that amend constitutions to entrench their power, remove term limits, and restrict opposition activity while maintaining the formal apparatus of constitutional democracy represent a distinctive and particularly difficult-to-counter form of authoritarian governance. The Fifteenth Amendment's abolition of the caretaker government system, its extension of the prime minister's authority, and its insertion of provisions that effectively insulated the governing party's constitutional changes from subsequent reversal are textbook examples of abusive constitutionalism in Landau's sense.

The concept of democratic backsliding, systematically analyzed in the comparative politics literature by scholars including Nancy Bermeo, Steven Levitsky, and Lucan Way, provides additional theoretical resources for understanding Bangladesh's constitutional experience. Bermeo's taxonomy of democratic backsliding, which distinguishes between executive coups, executive aggrandizement, strategic manipulation of elections, and the promissory coups of military forces that promise to restore democracy while actually preventing it, maps directly onto Bangladesh's specific constitutional pathologies. The July 2024 uprising can be understood, in this theoretical framework, as the popular response to a sustained period of executive aggrandizement and strategic electoral manipulation that had progressively delegitimized the constitutional order.

CHAPTER TWO: THE HISTORY OF EMERGENCY AND MARTIAL LAW IN BANGLADESH - FROM CONSTITUTIONAL SILENCE TO CONSTITUTIONAL LAUNDERING

2.1 The Founders' Deliberate Omission: No Emergency in the Original Constitution

The Constitution of Bangladesh did not originally contain any provision for the declaration of an emergency. As such there was no provision in the Constitution concerning the suspension of the

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enforcement of fundamental rights under any circumstances. The Daily Star This deliberate omission was one of the most philosophically interesting and practically consequential choices made by the framers of the original 1972 constitution.

The choice to omit emergency provisions was not accidental. The framers were acutely aware of the Pakistani experience, in which emergency powers had been used systematically to suppress democratic opposition, arrest political leaders, and maintain essentially colonial administrative control over East Pakistan by a government based in West Pakistan. The repeated proclamation of emergency in Pakistan, combined with the use of emergency legislation to detain political opponents without trial, had been a central feature of the legal architecture of Bengali subjugation. The Awami League leadership and the constitutional drafters, having lived through this experience and having themselves suffered under emergency detention, were determined that the new constitutional order would not replicate this mechanism of political control.

The omission of emergency provisions from the original constitution was therefore a philosophically principled choice grounded in a specific theory of constitutional design: that a constitution built on the principles of democratic self-governance and the protection of fundamental rights should not include within itself a mechanism for the suspension of those principles and rights, even in the name of necessity. This choice reflected a reading of constitutional history, specifically the Pakistani experience, that suggested emergency powers were more likely to be abused than legitimately exercised, and that the risks of including such powers outweighed any benefit they might provide in a genuine national security crisis.

This principled choice was, however, also practically naive in important respects. Every constitutional system will face genuine crises, whether military, economic, environmental, or political, that may require governmental responses beyond what the normal constitutional framework easily accommodates. The framers' understandable reaction against the abuse of emergency powers in Pakistan led them to design a constitutional framework that provided no authorized mechanism for governmental response to crisis situations, which meant that when crises arose, they would either be managed within normal constitutional rules or through extra-constitutional measures that the constitution had no means to authorize, regulate, or subsequently validate.

2.2 The Fourth Amendment and the Constitutional Framework for Emergency

The Fourth Amendment to the Constitution, adopted in January 1975, represented the most dramatic constitutional transformation in Bangladesh's history up to that point, converting the parliamentary system into a presidential one-party system under Mujibur Rahman's Bangladesh Krishak Sramik Awami League, universally known as BAKSAL. Among the many constitutional changes introduced by the Fourth Amendment was the insertion of emergency provisions into the constitution for the first time.

The Fourth Amendment's emergency provisions were designed not to protect the constitutional order against genuine external threats but to provide constitutional authorization for the extensive executive control over political activity that the BAKSAL system required. The transformation of Bangladesh into a one-party state with a presidential executive who concentrated virtually all

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governmental authority created an inherent tension with the constitutional rights of free expression, assembly, and political participation, and the new emergency provisions were designed to resolve that tension by authorizing the suspension of those rights whenever the president determined that an emergency existed.

The insertion of emergency provisions through the Fourth Amendment thus represents the first great example of what later scholars would call abusive constitutionalism in Bangladesh's experience: the use of constitutional amendment to create within the constitution itself the legal mechanisms for the suppression of constitutional rights. The constitutional authorization of emergency is not in itself abusive, since all mature constitutional systems include some form of emergency provision. What makes the Fourth Amendment's emergency provisions abusive is that they were not designed to address genuine national security emergencies but to provide constitutional cover for a political project of one-party consolidation of power.

The assassination of Sheikh Mujibur Rahman in August 1975 ended the BAKSAL system before it had been fully implemented, but the constitutional provisions inserted by the Fourth Amendment remained in the constitutional text even as the subsequent military-backed governments rewrote other parts of the constitution. This selective retention of the emergency provisions, inserted by a constitutional amendment that the subsequent governments otherwise regarded as illegitimate, reflected the obvious institutional interest that any governing authority has in maintaining the maximum possible emergency power regardless of its ideological or political character.

2.3 Martial Law and the Constitution: The Great Constitutional Fraud of Validation

The most fundamental challenge to Bangladesh's constitutional framework was not the exercise of emergency powers within the constitutional framework but the repeated imposition of martial law by military forces that operated entirely outside the constitutional framework. Bangladesh has experienced multiple periods of direct or indirect military rule: the martial law period under President Khondaker Mushtaque Ahmed and subsequently under General Ziaur Rahman from August 1975, the military-backed government of General Hussain Muhammad Ershad from March 1982 to December 1990, and the military-backed caretaker government of January 2007 to December 2008.

In a bloodless coup on 24 March 1982, Ershad stormed into Bangabhaban and at gunpoint removed President Sattar from office and proclaimed himself Chief Martial Law Administrator, and suspended the constitution. Wikipedia This act of raw military force, wholly outside any constitutional authorization, was the most dramatic illustration of Bangladesh's recurring constitutional problem: that the formal constitutional order has been repeatedly overthrown by military power and that the subsequent resumption of constitutional governance has been accompanied by retrospective constitutional validation of the extra-constitutional interregnum.

The constitutional theory of martial law validation is one of the most troubling in the entire Bangladesh constitutional experience. When a military government eventually returns power to civilian constitutional government, it typically insists on constitutional amendments that retrospectively validate the martial law proclamations, decrees, and orders that were issued

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during the period of military rule. These validation amendments are constitutionally problematic in several respects.

First, they require the new constitutional government to acknowledge the legal validity of acts that were taken in clear violation of the constitution, thereby compromising the principle of constitutional supremacy by admitting that extra-constitutional action can create valid legal obligations. Second, they typically protect from judicial challenge the executive actions taken during the martial law period, even if those actions included violations of fundamental rights and abuses of power that would have been clearly unconstitutional if taken by a civilian government. Third, they create constitutional precedent for the proposition that extra-constitutional military action, if successful and subsequently validated, is in retrospect constitutionally authorized, providing a perverse incentive structure for future would-be coup makers.

The Fourth and Seventh Amendments to the Bangladesh Constitution, which were adopted by the first and second military-backed governments respectively, included comprehensive validation provisions that gave retrospective constitutional authorization to acts done under martial law. The Seventh Amendment, in particular, inserted a new Article 6A into the constitution that specifically validated all proclamations, decrees, orders, and other acts of the Martial Law regime, depriving the courts of jurisdiction to challenge these measures even on grounds that they violated fundamental rights.

The Supreme Court's engagement with these martial law validation provisions has been one of the most important and jurisprudentially sophisticated areas of Bangladesh's constitutional law. The landmark decision in Khondker Delwar Hossain v Bangladesh Italian Marble Works Limited, decided by the Appellate Division in 2010, which is more commonly known as the Seventh Amendment Case, declared the Seventh Amendment unconstitutional and invalid on the grounds that it violated the basic structure of the constitution by retrospectively validating an unconstitutional seizure of power and by attempting to bar the courts from exercising their constitutionally protected jurisdiction over matters of fundamental rights.

The Seventh Amendment Case is one of the most important decisions in Bangladesh's constitutional jurisprudence. In holding that constitutional amendments can be invalid on grounds of basic structure violation, the court asserted a form of judicial review of constitutional amendments that goes beyond the ordinary power of courts to review legislation. In applying this principle to the martial law validation provisions, the court essentially declared that no constitutional amendment can legitimately authorize, or retrospectively validate, the seizure of power by unconstitutional means, even if such an amendment is adopted by a duly elected parliament with the required supermajority.

This holding has profound implications for constitutional theory. It asserts that constitutional legitimacy is not purely formal but substantive: that a measure which purports to be a constitutional amendment but which validates the destruction of constitutional government cannot itself claim constitutional authority. This is a strong and philosophically contentious claim, but it reflects an important truth about the nature of constitutional order: that a constitution cannot authorize its own destruction and that measures which purport to do so are self-defeating in the relevant normative sense.

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2.4 The Ershad Period: Constitutional Authoritarianism and the Laundering of Military Rule

The period of Hussain Muhammad Ershad's rule from 1982 to 1990 represents a particularly important case study in the relationship between martial law, constitutional governance, and the politics of legitimation. Ershad's regime went through several distinct phases in its constitutional status, beginning as an openly unconstitutional military government, transitioning through a period of quasi-constitutional operation under martial law while elections were held for a constitutionally anomalous parliament, and finally arriving at a form of constitutional presidential government that was created through elections widely regarded as fraudulent and that maintained the essential authoritarian character of military rule while wearing the costume of constitutional democracy.

The constitutional strategy of the Ershad government was sophisticated and reflects a developing awareness among authoritarian leaders of the importance of constitutional legitimacy as a source of political sustainability. Pure military rule, as the experience of Bangladesh and other developing countries had demonstrated, is inherently unstable: it lacks the popular authorization that constitutional governments derive from democratic elections, it generates international opposition from donors and allies who condition their support on democratic governance, and it creates a succession problem that pure military hierarchy cannot reliably resolve. By constructing a constitutional framework around military authority, even a deeply compromised one, Ershad sought to acquire a degree of legitimacy that would make his continued rule more sustainable than open martial law.

The constitutional innovations of the Ershad period included the Eighth Amendment of 1988, which inserted Islam as the state religion into Article 2A of the constitution. This constitutional change, like much of the constitutional engineering of the Ershad period, served political purposes that had little to do with its stated rationale: by formally constitutionalizing the Islamic character of the state, Ershad hoped to cultivate support among Islamist political forces and to position himself as a champion of religious values against the secular and socialist traditions of the Awami League. The constitutional dimensions of the state religion provision, and its relationship to the rights of religious minorities and the principle of equal citizenship, have been analyzed in Part Five of this textbook.

The constitutional relationship between Ershad's constitutional amendments and the basic structure doctrine has been a subject of sustained judicial and academic attention. Several of the constitutional changes made during the Ershad period have been challenged on basic structure grounds, including the state religion provision and the validation of martial law decrees. The Supreme Court's treatment of these challenges has been inconsistent and has not produced a coherent jurisprudential framework for distinguishing between constitutional amendments that legitimately change the constitutional order and amendments that fundamentally undermine the constitutional structure in ways that the basic structure doctrine prohibits.

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CHAPTER THREE: THE CONSTITUTIONAL FRAMEWORK OF EMERGENCY POWERS AS ENACTED - ARTICLES 141A THROUGH 141C AND THEIR JURISPRUDENTIAL ANALYSIS

3.1 The Text of the Emergency Provisions

The emergency provisions that now appear in the Bangladesh Constitution as Articles 141A through 141C are the product of the constitutional engineering of the military governments of the 1970s and 1980s, subsequently retained with modifications by the civilian governments that followed. Understanding these provisions requires reading them against the background of the history traced above, recognizing that they were not designed as a good-faith attempt to provide constitutionally appropriate emergency powers but as instruments of political control dressed in constitutional language.

Article 141A empowers the President to issue a proclamation of emergency if the President is satisfied that a grave emergency exists whereby the security or economic life of Bangladesh, or any part thereof, is threatened, whether by war or external aggression or internal disturbance. The emergency proclamation must be laid before parliament within thirty days and shall cease to operate at the expiry of that thirty-day period unless it has been approved by a resolution of parliament supported by not less than two-thirds of the total number of members of parliament. The President may revoke the proclamation at any time.

Article 141B provides that while a proclamation of emergency is in operation, Parliament may make laws including laws with respect to any matter in the legislative list of any local government unit, notwithstanding any inconsistency with the provisions of the constitution, and the executive of the Republic shall have power to give directions to the local government on any matter. This provision significantly expands the legislative and executive authority of the national government during emergencies, potentially overriding the constitutional division of governmental authority between national and local institutions.

Article 141C provides that while a proclamation of emergency is in operation, the President may, by order, declare that the right of any person to move any court for the enforcement of such of the fundamental rights conferred by Part III of the constitution as may be mentioned in the order, and all proceedings pending in any court for the enforcement of the rights mentioned therein, shall remain suspended for the period during which the proclamation is in force. This provision is the most constitutionally significant of the three, as it authorizes the suspension of the judicial enforcement of fundamental rights, effectively converting those rights from legally enforceable guarantees into mere paper promises for the duration of the emergency.

The constitutional limitations on this emergency framework are modest. Certain rights are specified as non-suspendable even during emergencies: Articles 27 (equality before the law), 31 (right to protection of the law), 32 (protection of the right to life), 33 (safeguards against arbitrary detention), and 35 (protection in respect of trial and punishment) are among those that Article 141C expressly preserves from suspension. But the non-suspension of these rights is significantly weaker than it appears, because the emergency framework also broadens executive power in ways that may effectively undermine even nominally preserved rights.

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3.2 Comparative Constitutional Analysis of Bangladesh's Emergency Provisions

Comparing Bangladesh's emergency provisions with those of comparable constitutional systems reveals both the conventional elements of the framework and its distinctive inadequacies.

The Indian emergency provisions, found in Articles 352 through 360 of the Indian Constitution, provide the closest and most relevant comparison. India's experience with emergency, particularly the national emergency declared by Indira Gandhi in June 1975 and maintained until March 1977, has been one of the most extensively analyzed case studies in the comparative constitutional literature on emergency powers. The forty-fourth amendment to the Indian Constitution, adopted in 1978 after the restoration of democracy following the Emergency period, made the Indian framework significantly more robust by requiring a written recommendation of the cabinet before the Prime Minister could advise the President to declare an emergency, specifying that parliament must approve the emergency by a special majority of two-thirds of members present and voting, requiring periodic parliamentary renewal of the emergency, and specifying that a simple majority of the Lok Sabha may revoke the emergency. These safeguards, derived directly from the experience of Emergency's abuse, represent an attempt to learn from crisis and build constitutional resilience against recurrence.

Bangladesh's emergency framework lacks several of these safeguards. The requirement of parliamentary approval within thirty days is relatively weak compared with the immediate cabinet recommendation requirement that the Indian forty-fourth amendment introduced. The lack of a specific mechanism for the lower house to revoke an emergency by simple majority, against the will of the government, means that a parliamentary majority government can maintain an emergency as long as it maintains its own parliamentary majority. And the specific authorization to suspend the judicial enforcement of fundamental rights, while it preserves certain specified rights, is broader than is necessary for addressing genuine national security emergencies and creates too much space for the use of emergency powers for political repression.

The German Basic Law's emergency framework, which emerged from the traumatic experience of the Weimar Constitution's Article 48, under which emergency decree power was systematically abused by successive governments before Hitler's seizure of power, provides perhaps the most sophisticated model of constitutionally constrained emergency authority. The German framework distinguishes between different types of emergency situations and provides carefully calibrated emergency powers for each, with the Bundesrat, the upper house representing the state governments, playing a crucial role in checking emergency measures that might otherwise be adopted by a parliamentary majority acting at the direction of the executive. The permanent availability of constitutional review by the Federal Constitutional Court, whose jurisdiction cannot be suspended even during emergencies, provides a further institutional check on emergency power abuse.

The South African Constitution's emergency framework, found in Section 37, is notable for its specific inclusion of non-derogable rights that may not be suspended under any circumstances, its requirement that the declaration of emergency by the National Assembly must be approved by a majority of the total membership of the Assembly rather than merely a majority of members

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present and voting, and its specific provision that courts retain jurisdiction to determine questions about the validity of the declaration of emergency and the validity of legislation enacted pursuant to it. The South African framework reflects the drafters' determination, after the long experience of apartheid emergency governance, to create constitutional mechanisms that would prevent the kind of open-ended emergency rule that the apartheid government had used to suppress democratic opposition.

3.3 The Digital Security Act and the Cyber Security Act as Quasi-Emergency Instruments

The constitutional analysis of Bangladesh's emergency powers cannot be confined to the formal emergency provisions of Articles 141A through 141C. A comprehensive understanding of how emergency state authority has actually operated in Bangladesh requires attention to the broader range of legislation that has functioned as quasi-emergency law, authorizing exceptional state powers over citizens outside the formal emergency framework. Chief among these is the tradition of security legislation that has been one of the most distinctive and constitutionally problematic features of Bangladesh's legal landscape.

A common feature of almost every democratic Constitution in the world is the inclusion of detailed provisions concerning proclamation of emergency to overcome an imminent threat to the life of nation by war, external aggression, armed rebellion, internal disturbances, natural catastrophes, and economic breakdown. The Daily Star What is less common, and what represents one of the most significant constitutional pathologies of Bangladesh's legal system, is the use of ordinary legislation rather than constitutionally authorized emergency powers to vest in the executive exceptional authority to restrict the liberty of citizens, suppress political opposition, and circumscribe the exercise of fundamental rights.

The Special Powers Act of 1974, which was enacted during Sheikh Mujibur Rahman's government as one of the constitutional tools of political control of the BAKSAL period, established a framework of preventive detention that has been used by every subsequent government to suppress political opposition. The Act authorizes the detention of persons without trial for purposes of preventing them from prejudicing the maintenance of public order, the maintenance of essential services, or the economic or financial interests of the state, using terms so vague and so broad that virtually any form of political activity can be characterized as threatening these interests. The constitutional challenge to the Special Powers Act's preventive detention provisions has been repeatedly raised in the courts, and the courts have addressed specific applications of the Act while declining to strike down its most problematic provisions on their face.

The Cyber Security Act 2023 is a continuation of successive repressive legislations in Bangladesh that have repeatedly facilitated the state's crackdown on civic space and human rights, including during the student-led quota-reform protests. The CSA rehashes almost all of the repressive provisions of the repealed Digital Security Act 2018 and Section 57 of the Information and Communications Technology Act 2006 that preceded it, and has been weaponized to target journalists, human rights defenders and dissidents despite the former government's repeated assurances to the contrary. Amnesty International

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The trajectory of Bangladesh's digital security legislation from Section 57 of the ICT Act, through the Digital Security Act, to the Cyber Security Act represents one of the most clear-cut examples in the comparative constitutional literature of what Agamben calls the permanentization of the state of exception: the normalization of exceptional state powers over citizens through ordinary legislative channels rather than formally declared emergencies. Each iteration of the legislation was justified by the government in terms of genuinely important public interests, including cybersecurity, prevention of hate speech, and protection of national security. But each iteration retained and in some respects expanded the exceptional powers that critics identified as incompatible with constitutional rights, while adding cosmetic changes designed to deflect criticism without addressing the fundamental constitutional problems.

The Cyber Security Act, 2023 was passed by the Parliament of Bangladesh in September 2023 with provisions for punishing those filing fake cases under the act. It contains most of the provisions of Digital Security Act, 2018 and Section 57 of the Information and Communication Technology Act, 2006. Amnesty International described it as a replication of the "draconian" Digital Security Act. Wikipedia

The specific constitutional problems with the digital security legislation were comprehensively documented by domestic and international human rights organizations. The DSA faced extensive criticism, particularly for restricting the freedoms of thought, conscience, speech, expression, and the press, as recognised in Article 39 of Bangladesh's Constitution and Article 19 of the International Covenant on Civil and Political Rights, to which Bangladesh is party. The Daily Star The application of this legislation, and its successor the Cyber Security Act, to journalists, human rights defenders and dissidents Amnesty International through thousands of cases, documented by organizations including Amnesty International, Human Rights Watch, and Transparency International Bangladesh, created an atmosphere of fear and self-censorship that functioned as a de facto emergency suspension of freedom of expression without the constitutional requirements of formal emergency declaration, parliamentary approval, and temporal limitation.

On 26 June 2024, in the build-up to the ongoing quota-reform protests, Bangladesh police arrested a man under the Cyber Security Act for his criticism of the quota system in a Facebook post. Amnesty International This use of digital security legislation against participants in what would become the July 2024 mass uprising illustrates the specific mechanism by which quasi-emergency legislative powers were deployed against democratic political mobilization, treating as cybercrime the exercise of constitutional rights of free expression and political participation.

3.4 The Constitutional Theory of Lawfare

The use of law as an instrument of political oppression, without the formal declaration of emergency that the constitution would require for the use of emergency powers, has been analyzed by constitutional scholars under the concept of lawfare, defined by scholars including Major General Charles Dunlap as the use of law as a weapon of war, and more broadly in the constitutional context as the instrumentalization of legal processes for political purposes that are inimical to the values that law is meant to serve.

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In Bangladesh's constitutional context, lawfare operated through several mechanisms that deserve careful constitutional analysis. The first was the use of criminal law provisions, including sedition, defamation, and digital security offences, to criminalize political speech and thereby convert legal proceedings into instruments of political harassment. The filing of cases against political opponents, journalists, and civil society activists, as documented by numerous organizations tracking the application of the Digital Security Act and the Cyber Security Act, was not the incidental misapplication of criminal law but a systematic pattern of abuse that had the purpose and effect of suppressing political opposition and controlling public discourse.

The second mechanism was the use of civil law proceedings, including contempt of court and defamation suits, to impose financial burdens on critics and opponents that served to suppress their activity even before any court decision was reached. The cost of defending against multiple cases, the disruption to daily life caused by court appearances, and the reputational damage caused by the mere fact of criminal prosecution combine to create what legal scholars have called the chilling effect on the exercise of constitutional rights, a deterrent that operates regardless of whether any of the cases ultimately results in conviction.

The third mechanism was the selective non-enforcement of law in ways that benefited the governing party and disadvantaged its opponents. Electoral laws, anti-corruption legislation, labor law, and environmental regulation are all areas where the systematic difference between the legal treatment of governing party figures and opposition figures has been documented in Bangladesh. Selective law enforcement of this kind represents a form of institutional lawfare that operates not through the active weaponization of law but through its passive discriminatory application.

CHAPTER FOUR: THE SPECIAL POWERS ACT AND THE CONSTITUTIONAL LAW OF PREVENTIVE DETENTION

4.1 Preventive Detention: Constitutional Authorization and Abuse

The constitutional framework for preventive detention in Bangladesh rests on Article 33 of the constitution, which provides specific procedural protections for persons detained without trial on grounds of state security or public order. Article 33 requires that a detained person be informed of the grounds for their detention as soon as practicable, that they be given the earliest opportunity of making a representation against the order, and that no person shall be detained for a period exceeding six months without the order being confirmed by an Advisory Board comprising persons who are or have been qualified to be appointed as judges of the Supreme Court.

The constitutional text of Article 33 is relatively protective by the standards of preventive detention law in South and Southeast Asia. But the gap between the constitutional text and the practical operation of preventive detention in Bangladesh has been enormous. The Special Powers Act of 1974, which is the primary legislative vehicle for preventive detention, has routinely been used in ways that violate the procedural protections of Article 33, including

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through the detention of persons beyond the six-month maximum without Advisory Board confirmation, the failure to disclose grounds of detention in meaningful terms, and the use of successive detention orders to circumvent the time limits by releasing and immediately re-detaining individuals.

The constitutional jurisprudence of preventive detention in Bangladesh has developed through a substantial body of High Court Division decisions addressing specific applications of the Special Powers Act. The courts have been willing to order the release of individuals whose detention violated specific procedural requirements of Article 33 and the Special Powers Act, but they have been reluctant to engage with the broader constitutional question of whether the Act's substantive standards for detention are consistent with the constitutional guarantees of personal liberty and equality before the law.

The broader constitutional question is whether any form of preventive detention, meaning the detention of persons without trial on grounds of potential future conduct rather than past criminal acts, is consistent with the constitutional commitment to the rule of law and the right to a fair trial. The rule of law, understood in its substantive rather than merely formal sense, requires that the state's interference with individual liberty be based on objective evidence of past harmful conduct, determined through a fair process in which the individual has the opportunity to challenge the evidence against them, and proportionate to the harm sought to be prevented. Preventive detention, by definition, operates before any harmful conduct has occurred and on the basis of a prediction of future conduct that the individual has not yet been able to challenge or disprove.

The detention of political opponents under the Special Powers Act has been one of the most consistent abuses of state power throughout Bangladesh's constitutional history. Every government, from Sheikh Mujibur Rahman through General Ershad through both the BNP and the Awami League, has used the Special Powers Act to imprison political opponents without trial, treating political opposition as a threat to the economic or financial interests of the state or to public order. The constitution's commitment to freedom of political association and expression is directly and fundamentally incompatible with the use of preventive detention for political purposes, and the persistence of this practice represents one of the most severe ongoing constitutional violations in Bangladesh's political life.

4.2 The Judiciary and Preventive Detention: Between Protection and Deference

The relationship between the Bangladesh courts and the executive's use of preventive detention has been characterized by a frustrating combination of meaningful individual interventions and structural deference to executive authority. The courts have, in many individual cases, exercised their habeas corpus jurisdiction to order the release of persons unlawfully detained, finding violations of specific procedural requirements or factual insufficiencies in the grounds stated for detention. These individual remedies are genuinely important, since they represent the vindication of the constitutional rights of specific individuals and impose some degree of constraint on the executive's detention power.

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But the courts have consistently declined to take on the broader structural challenge of the Special Powers Act's constitutionality. They have treated the Act's authorization of preventive detention as a settled constitutional matter, addressing only the legality of specific applications rather than the constitutional validity of the underlying legislative framework. This structural deference reflects both the political environment in which Bangladesh's courts have operated, in which challenges to the executive's security powers have been strongly resisted, and an underlying jurisprudential approach that treats security legislation as a domain in which judicial deference to executive judgment is appropriate.

The comparative constitutional perspective strongly challenges this deference. Courts in India, South Africa, the United Kingdom, and Canada have all developed substantial jurisprudence scrutinizing preventive detention legislation and insisting that the substantive standards for detention, not merely the procedural mechanisms, must conform to constitutional requirements of proportionality, necessity, and respect for fundamental rights. The Indian Supreme Court's decision in A.K. Gopalan v State of Madras (1950), long criticized for its excessive deference to parliamentary power in the area of detention, was substantially overruled by subsequent decisions that developed a more rights-protective approach. The South African Constitutional Court's decisions on detention without trial have consistently applied high standards of constitutional scrutiny to executive detention powers, refusing to defer to legislative or executive claims of security necessity without compelling evidence.

The development of a more robust constitutional scrutiny of Bangladesh's preventive detention framework, both in terms of the statutory standards and the administrative practices of detention, is an important task for the current constitutional reform process. The Constitutional Reform Commission's report addressed some aspects of this question, but the detailed legislative reforms necessary to bring Bangladesh's preventive detention law into compliance with constitutional requirements have not yet been comprehensively developed.

CHAPTER FIVE: THE JULY 2024 UPRISING, THE CONSTITUTIONAL VACUUM, AND EMERGENCY GOVERNANCE WITHOUT CONSTITUTIONAL AUTHORIZATION

5.1 The Constitutional Dimensions of the July 2024 Uprising

The July 2024 uprising that brought down Sheikh Hasina's government was not merely a political event of extraordinary significance. It was a constitutional event of the first order, one that created what constitutional scholars have called a constitutional vacuum, a situation in which the normal mechanisms of constitutional governance have either broken down or been rendered dysfunctional by political events of such magnitude that the ordinary constitutional framework cannot provide an adequate structure for managing the transition.

The leaders of the uprising articulated a demand for a "new Constitution", principally to guard against the return of authoritarianism. The core argument was that the founding Constitution facilitated autocratic rule by concentrating power in the office of the Prime Minister. Article

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55(2), for instance, provides that the "executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister." Such an allocation of authority is unusual. Supreme Court Observer

The constitutional vacuum created by Sheikh Hasina's resignation and flight from the country raised a series of urgent constitutional questions that required immediate practical resolution. The constitution provides for the President to act as head of state, but the President's authority in the absence of a Prime Minister who commands a parliamentary majority is unclear in several important respects. The constitution does not contemplate the specific situation in which a Prime Minister resigns not to allow an opposition government to form but to flee the country in the face of mass popular uprising, and the constitutional provisions for managing such a transition are entirely inadequate.

The Appellate Division of the Supreme Court subsequently declined leave to appeal, holding that the President was entitled to seek an advisory opinion on a question of public importance in circumstances of an "extraordinary constitutional vacuum." This decision in Muhammad Mohsen Rashid v Ministry of Law, Justice and Parliamentary Affairs has since been treated as conferring an additional layer of legal legitimacy on the interim government. Supreme Court Observer

The interim government formed under Muhammad Yunus operated outside the normal constitutional framework in ways that required creative constitutional interpretation and justification. The formation of an interim government not through the constitutionally specified process for government formation, but through an extraordinary popular and institutional consensus in conditions of constitutional vacuum, represents a form of constitutional improvisation that the formal constitutional text does not authorize but that the underlying constitutional values of democratic governance and protection of fundamental rights can be understood to require.

The constitutional theory of constitutional moments, developed by Bruce Ackerman, provides a framework for understanding what happened in July and August 2024. Ackerman argues that democratic constitutional orders experience periodic extraordinary moments in which the normal processes of representative government are transcended by a higher-order political mobilization that speaks directly in the name of the sovereign people and establishes new constitutional foundations. The July 2024 uprising can be understood as such a constitutional moment, one in which the accumulated failures of the existing constitutional order generated a popular mobilization of such intensity and breadth that it effectively delegitimized the existing government and created the political conditions for a new constitutional beginning.

The theoretical question of how to connect this constitutional moment to a legitimate constitutional process of reform has been the central challenge of Bangladesh's transition since August 2024. The Yunus government's decision to establish reform commissions, to engage in broad public consultation, to negotiate the July Charter with political parties, and to hold a referendum concurrently with elections represents one approach to this challenge. Whether that approach has succeeded in connecting the constitutional mandate of the July 2024 uprising to a legitimate and durable constitutional reform process will be determined by the choices made in the implementation phase that is now underway.

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5.2 The Interim Government's Constitutional Authority: Legality, Legitimacy, and Necessity

The constitutional basis of the Yunus interim government's authority to govern from August 2024 through February 2026 was one of the most contested constitutional questions of the entire transitional period. The government operated without a parliamentary mandate, without a formal constitutional authorization of the caretaker type, and in legal conditions that the constitution's text did not clearly address.

The arguments for the constitutional legitimacy of the interim government's authority rest on several foundations. The doctrine of necessity, recognized by courts in several constitutional systems as a basis for validating governmental action taken outside normal constitutional procedures in conditions of genuine crisis, provides one theoretical foundation. Courts in Pakistan, including in the landmark State v Dosso (1958) and Begum Nusrat Bhutto v Chief of Army Staff (1977), and in various Caribbean constitutional systems, have applied versions of the doctrine of necessity to validate governmental authority exercised outside normal constitutional procedures in conditions that made the exercise of such authority genuinely necessary for the preservation of constitutional order. Applied to the Yunus government's situation, the doctrine of necessity would suggest that the government's authority was legitimated by the practical necessity of providing governance during a period of constitutional vacuum in which no constitutionally specified alternative was available.

The popular mandate argument provides a different and in some respects more compelling foundation. The July 2024 uprising represented an extraordinary expression of popular will against the existing constitutional order, and the Yunus government's formation was the immediate political consequence of that popular expression. If, as democratic constitutional theory holds, all legitimate governmental authority ultimately derives from the consent of the governed, then a government formed in direct response to an overwhelming popular demand for change has a form of popular legitimacy that is, at minimum, not obviously inferior to the legitimacy of a government formed through electoral processes whose integrity was widely questioned.

The specific judicial legitimation provided by the Supreme Court's advisory opinion acknowledging the constitutional vacuum and effectively endorsing the interim government's formation added a further legal dimension to this legitimacy. The Appellate Division held that the President was entitled to seek an advisory opinion on a question of public importance in circumstances of an "extraordinary constitutional vacuum." Supreme Court Observer This judicial imprimatur, while not resolving all constitutional questions about the interim government's authority, provided the government with a basis for claiming constitutional legitimacy that was more than merely political.

The deeper constitutional question is whether the legitimacy of the Yunus government's authority depended entirely on the exceptional circumstances of constitutional vacuum or whether it reflected a more fundamental constitutional principle about the relationship between popular sovereignty and governmental authority. If the July 2024 uprising is understood as an exercise of the constituent power of the people, the original sovereign authority from which all constitutional authority derives, then the Yunus government's authority can be understood as

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deriving from the same source as the authority of the constitution itself, rather than from any specific constitutional provision.

5.3 Emergency-Style Measures During the Transition

The Yunus interim government, despite not formally declaring a state of emergency under Articles 141A through 141C, took a series of measures during the transitional period that had the character and practical effect of emergency governance. The declaration that the Awami League was a terrorist organization, which was used to justify its exclusion from the February 2026 elections, was one of the most constitutionally controversial of these measures. Shortly after the announcement in December 2025, it was confirmed that the Awami League would not be allowed to participate. This exclusion was effected through the use of anti-terrorism legislation, with the interim government asserting that the party's involvement in the July 2024 massacre brought it within the scope of a terrorist organisation. This justification obscures what appears to be a colourable exercise of legal power. Supreme Court Observer

The constitutional questions raised by this exclusion are serious and were not adequately addressed in the transitional period. The right to participate in elections and the right of political parties to contest for governmental power are among the most fundamental rights in a constitutional democracy. The exclusion of a major political party from elections on grounds that amount to a collective punishment of the entire party for the conduct of its leadership raises profound questions about the constitutional requirements of proportionality, individual accountability, and the right to political participation.

The constitutional theory of lustration, meaning the exclusion from public office of persons associated with past authoritarian regimes, provides a relevant comparative framework. Post-communist European countries developed extensive lustration frameworks after 1989 to manage the transition from authoritarian to democratic governance, and the constitutional courts of Germany, Czech Republic, Hungary, and Poland all engaged with the constitutional limits of lustration measures. The central constitutional principle developed in this comparative jurisprudence is that lustration measures must be individually targeted, based on evidence of individual culpability rather than mere association with a disqualified organization, and must comply with the procedural requirements of due process including the right to challenge the evidence on which disqualification is based.

Applied to the Awami League's exclusion from the February 2026 elections, this comparative framework suggests that the use of anti-terrorism legislation to collectively disqualify the entire party was constitutionally inadequate even if individual party leaders bore genuine responsibility for the July 2024 killings. Individual accountability for specific acts of political violence is constitutionally appropriate, and the criminal prosecution of individual Awami League figures who bore direct responsibility for the violence was constitutionally legitimate. But the collective exclusion of a party representing a significant portion of the electorate from democratic competition goes beyond what the constitutional principles of individual accountability and proportionality can justify.

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CHAPTER SIX: THE REFORM OF EMERGENCY POWERS - TOWARDS A CONSTITUTIONALLY PRINCIPLED FRAMEWORK

6.1 The Constitutional Reform Commission's Recommendations on Emergency Powers

The Constitutional Reform Commission's January 2025 report addressed the emergency powers provisions of the constitution in ways that reflected the specific lessons of Bangladesh's experience with those provisions. The CRC recognized that the existing emergency framework was both too permissive in its authorization of emergency measures and too weak in its accountability mechanisms, creating a legal environment in which emergency powers could be used for political purposes with insufficient constitutional constraint.

The CRC's specific recommendations on emergency powers included several important reforms. The first was the requirement that an emergency declaration must be preceded by a formal determination by a multi-member body rather than being a purely presidential decision. The involvement of the prime minister, the speaker, and other constitutional actors in the formal determination of emergency conditions would create institutional checks on the declaration of emergency that are absent from the existing framework, in which the President's satisfaction with the existence of an emergency is sufficient constitutional basis for its proclamation.

The second recommendation was the establishment of stronger parliamentary oversight of emergency measures, including the specific requirement that emergency legislation adopted pursuant to the emergency declaration must be approved by a two-thirds majority of parliament rather than a simple majority. This higher threshold would prevent a governing party from using emergency conditions to legislate on matters it could not address through the normal legislative process, and would create a requirement of cross-party consensus for the most consequential emergency measures.

The third recommendation was the creation of a constitutional obligation of periodic judicial review of emergency declarations, requiring the government to demonstrate to a designated judicial body at regular intervals that the conditions justifying the emergency continue to exist. This requirement would address the specific problem, illustrated by Bangladesh's experience and by comparative examples including India's Emergency period and the post-September 11 American security framework, of emergency declarations that persist far beyond the resolution of the conditions that originally justified them.

The fourth recommendation was the specific protection of certain rights from suspension even during emergencies, expanding the list of non-suspendable rights beyond those currently specified in the constitution to include freedom of expression in political matters, the right to organize and participate in political parties, and the right of journalists and civil society actors to investigate and report on government activities. These additions would directly address the specific pattern of Bangladesh's emergency-style governance, in which political expression, political organization, and journalistic activity have been the primary targets of emergency and quasi-emergency measures.

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6.2 The Cyber Security Ordinance 2025 and the Reform of Security Legislation

One of the most significant specific acts of the Yunus interim government in the domain of security legislation was the replacement of the Cyber Security Act 2023 with the Cyber Security Ordinance 2025. The Cyber Security Act 2023 lasted less than two years before being replaced. The Cyber Security Ordinance 2025, gazetted on May 21, 2025, replaced the Cyber Security Act 2023. The interim government enacted it after finding that the 2023 Act contained inadequate civil protection provisions, enabled abuse and oppression, and undermined fundamental rights including freedom of expression. Recording Law

The shift from the Cyber Security Act 2023 to the Cyber Security Ordinance 2025 is no mere legislative upgrade. It is a seismic reimagining of Bangladesh's relationship with digital governance. The process of developing the ordinance started with a first draft being released by the ICT Division on December 1, 2024, the process for public feedback finished by December 4, a recommendation by its Advisory Council on December 24, and final approval in early May 2025. This process of dialogue and participation was quite a departure from previous law making and showed that the interim government was serious about inclusion in policy making. Lawyersclubbangladesh

The most significant change was the removal of nine controversial sections from the Cyber Security Act 2023, including Section 21 criminalizing criticism of the Liberation War, Bangabandhu, national anthem, or flag; Section 24 penalizing the use of fake or deceptive identity; and Section 25 criminalizing offensive, false, or fear-inducing information. Recording Law

The removal of these specific provisions represents a significant improvement in Bangladesh's digital rights framework, directly addressing some of the most egregiously abused provisions of the previous legislation. But the concerns of civil society organizations and human rights advocates about the Cyber Security Ordinance 2025 deserve careful constitutional attention. The broad-reaching governmental powers and lack of judicial safeguards alongside vague legalistic language of the ordinance has the potential to undermine the rights of all citizens to privacy, free expression, and access to information in the digital space. Lawyersclubbangladesh

The most important contribution of the new ordinance is that it recognizes explicitly Internet access as a citizen's right, placing Bangladesh alongside the most forward-thinking countries that recognize that digital connectivity is a requirement for modern citizenship. Lawyersclubbangladesh This explicit constitutional recognition of internet access as a right, which the July Charter's reform proposals also include, represents a genuinely important constitutional development with far-reaching implications for the state's obligations in the digital domain.

The constitutional framework for digital rights, including the right to internet access, the protection of personal data, freedom of expression in digital spaces, and the prohibition of disproportionate digital surveillance, is one of the most rapidly developing areas of contemporary constitutional law. The UN Human Rights Council's 2016 resolution affirming that freedom of expression applies online as it does offline, the European Court of Human

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Rights' jurisprudence on state surveillance and digital privacy, and the emerging constitutional jurisprudence of various national courts on digital rights all provide frameworks that are relevant to Bangladesh's constitutional development in this domain.

We are concerned that these provisions can lead to mass surveillance and breach of individual privacy under Article 17 of the ICCPR, Article 12 of the UDHR, and Article 43 of Bangladesh's Constitution. While attention has been directed toward cybersecurity and data protection, we remain concerned that the approach to reforming digital governance policies and laws are narrow, piecemeal, and fragmented. Proposed changes to these highly complex legislations are stopgap measures and issue-specific solutions, and fail to address root causes of digital abuse and cyber security threats. Robert F. Kennedy Human Rights

This critique, advanced by a coalition of civil society organizations and human rights advocates, identifies the central structural weakness of Bangladesh's approach to digital rights reform: the focus on specific legislative provisions rather than on the development of a comprehensive constitutional framework for digital rights that would provide principled constraints on all forms of digital governance legislation. A constitutional provision affirming internet access as a right is valuable, but it requires elaboration into a broader constitutional framework addressing the multiple dimensions of digital rights if it is to provide meaningful protection against the specific abuses that have characterized Bangladesh's security legislation in the digital domain.

6.3 The Repeal of the Special Powers Act: The Unfinished Constitutional Business

The most important single reform of Bangladesh's emergency-style security legislation that has not yet been accomplished is the repeal of the Special Powers Act of 1974. The SPA, as analyzed in Chapter Four of this part, provides the primary legal framework for preventive detention without trial, and its use against political opponents has been one of the most persistent constitutional abuses of Bangladesh's political history.

The Constitutional Reform Commission addressed the SPA in its January 2025 report, recommending substantial amendments to bring Bangladesh's preventive detention law into conformity with constitutional requirements. But the CRC stopped short of recommending outright repeal, and the July Charter's specific provisions on preventive detention are less comprehensive than the constitutional reform that the human rights dimensions of this issue require.

The constitutional case for outright repeal of the Special Powers Act rests on several grounds. The substantive standards for detention under the Act, which allow detention on the basis of a prediction of future conduct that threatens broadly defined public interests, are inherently incompatible with the constitutional guarantee of personal liberty and the rule of law principle that the state's interference with individual liberty must be based on established past conduct rather than speculative future behavior. No subsequent amendment or judicial construction can make detention on these grounds constitutionally adequate, since the constitutional problem is not with specific provisions of the Act but with its fundamental logic.

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The procedural standards of the Act, while formally modeled on Article 33's constitutional protections, have been systematically insufficient in practice to provide meaningful protection against abuse. The Advisory Board mechanism, which is constitutionally required for detentions beyond six months, has functioned more as a legitimating formality than as a genuine independent check on executive detention decisions. The reform of the Advisory Board mechanism, including the requirement of genuine judicial rather than merely nominally judicial membership and the establishment of adversarial procedures in which the detainee has access to legal representation and the opportunity to challenge the evidence presented against them, would address some of these procedural inadequacies.

But the deeper constitutional problem remains. A state that retains the power to imprison citizens indefinitely without trial, on the basis of administrative determinations of potential future conduct, is not a state governed by the rule of law in the substantive sense that a genuine constitutional democracy requires. The constitutional reform process must ultimately grapple with the question of whether Bangladesh is prepared to make the political commitment to genuine rule of law that the repeal of the Special Powers Act and the comprehensive reform of preventive detention law would require.

CHAPTER SEVEN: INTERNATIONAL CONSTITUTIONAL COMPARISONS - EMERGENCY POWERS ACROSS CONSTITUTIONAL SYSTEMS

7.1 The United States: From the Steel Seizure Case to the War on Terror

The United States constitutional experience with emergency powers provides one of the most extensively studied and most theoretically rich comparative bodies of material, and its relevance to Bangladesh's situation derives not merely from the formal parallels but from the substantive constitutional challenges that both systems have confronted.

The foundational American statement on emergency executive powers is Justice Robert Jackson's concurrence in Youngstown Sheet and Tube Co. v Sawyer (1952), commonly known as the Steel Seizure Case. President Truman had seized privately owned steel mills during the Korean War, claiming emergency executive authority to prevent a labor dispute from disrupting steel production essential to the war effort. The Supreme Court held the seizure unconstitutional, and Jackson's concurrence provided the enduring analytical framework for evaluating claims of emergency executive authority. Jackson distinguished three situations: when the President acts with congressional authorization, in which case his authority is at its maximum; when the President acts in a zone of uncertainty where Congress has not spoken, in which case his authority is more doubtful; and when the President acts against the expressed will of Congress, in which case his authority is at its lowest ebb. This tripartite framework has been the dominant American approach to emergency executive powers and has been applied by courts in a wide range of subsequent cases.

The post-September 11 period in the United States generated a vast body of constitutional litigation about emergency executive powers, including the detention of enemy combatants

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without trial at Guantanamo Bay, the National Security Agency's program of warrantless electronic surveillance, and the use of military commissions to try suspected terrorists. The Supreme Court's decisions in Hamdi v Rumsfeld (2004), Rasul v Bush (2004), Hamdan v Rumsfeld (2006), and Boumediene v Bush (2008) constitute one of the most important bodies of emergency powers jurisprudence in the history of any constitutional court. The central constitutional principle that emerges from these decisions is that even in conditions of genuine national security emergency, the executive does not have unlimited authority to detain persons without the fundamental procedural protections that the constitution requires, including the right to habeas corpus review of the grounds for detention.

The application of these American constitutional principles to Bangladesh's situation requires sensitivity to the significant differences in constitutional context. Bangladesh's constitutional system, with its Westminster-derived parliamentary structure, its different separation of powers framework, and its specific historical experience of emergency abuse, cannot be analyzed through the lens of American constitutional doctrine without adaptation. But the fundamental principle that emerges from the American emergency powers jurisprudence, that constitutional rights including the right to liberty and due process cannot be suspended by executive action alone but require constitutional authorization and judicial oversight, is a principle of broad applicability that is directly relevant to Bangladesh's constitutional reform.

7.2 India's Emergency Experience and its Constitutional Legacy

India's national emergency of June 1975 to March 1977, declared by Prime Minister Indira Gandhi ostensibly in response to a political crisis created by the Allahabad High Court's invalidation of her election but effectively as a mechanism for suppressing political opposition and concentrating power in the executive, is one of the most extensively analyzed episodes in the comparative constitutional literature on emergency powers and democratic backsliding. The Emergency period provides a particularly relevant comparative case for Bangladesh, both because of the constitutional parallels between the Indian and Bangladeshi systems and because of the specific mechanism by which emergency was used to suppress democratic opposition in ways that closely paralleled the techniques employed by Bangladesh's own authoritarian governments.

The Indian Supreme Court's deeply controversial decision in ADM Jabalpur v Shivkant Shukla (1976), known as the Habeas Corpus case, which held by four to one that fundamental rights including the right to life were suspended during the Emergency and that therefore no habeas corpus petition challenging preventive detention could be entertained, is widely regarded as one of the most serious failures of constitutional jurisprudence in any democratic legal system. The lone dissent of Justice H.R. Khanna, who argued that the right to life and personal liberty cannot be suspended by any emergency declaration because those rights are pre-constitutional natural rights that exist independently of the constitution's guarantee, is one of the great moments of judicial courage in Indian constitutional history. Khanna's dissent effectively ended his prospects for elevation to the Chief Justiceship, as the Gandhi government passed him over for that position after his dissent. But his argument has been vindicated by subsequent Indian constitutional jurisprudence, particularly by the expanded rights framework developed after the Emergency period.

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The post-Emergency reforms to the Indian Constitution, implemented through the forty-second and forty-fourth amendments, significantly strengthened the constitutional framework for emergency powers precisely because the Emergency period had demonstrated the catastrophic consequences of an inadequate framework. The specific requirement that an emergency declaration must be preceded by a written recommendation by the cabinet, that parliamentary approval must be by a special majority, that the Lok Sabha may revoke the emergency by simple majority, and that the Supreme Court retains jurisdiction to review emergency declarations, all represent direct responses to the specific failures of the 1975 Emergency.

Bangladesh has not undertaken comparable post-crisis constitutional reform of its emergency powers framework, despite having experienced multiple episodes of emergency and martial law that demonstrated the specific weaknesses of its framework. The current constitutional reform process offers an opportunity to learn from both Bangladesh's own experience and from India's post-Emergency reforms, and the failure to take that opportunity would represent a significant missed chance to strengthen the constitutional framework against future abuse.

7.3 The German Basic Law's Eternal Clauses and the Limits of Emergency Power

The German Basic Law of 1949 was designed, in the specific consciousness of the Weimar Constitution's failure to prevent Hitler's seizure of power, to make constitutional democracy resistant to the kind of legal mechanisms through which the Nazis had destroyed the Weimar Republic while maintaining the forms of constitutional procedure. The use of the Weimar Constitution's Article 48, the emergency decree power, to establish the legal architecture of the Nazi state provided the most important negative constitutional precedent in the history of emergency powers law, and the German Basic Law's response to this precedent is directly relevant to Bangladesh's constitutional reform debate.

The German Basic Law's response to the Weimar emergency power abuse has two main components. The first is the eternity clause in Article 79(3), which declares that constitutional amendments affecting the human dignity guarantee of Article 1, the federal structure of the state, and the democratic republican principles of Articles 1 through 20 are inadmissible. This absolute prohibition on amendments affecting these foundational provisions prevents any government, regardless of how large its parliamentary majority, from using constitutional amendment to destroy the democratic and rights-protective character of the constitutional order. The second component is the comprehensive and carefully designed emergency powers framework, established through the emergency constitution amendments of 1968, which provides specific and limited emergency powers while ensuring that the democratic character of the state and the protection of fundamental rights are maintained even during the most severe emergencies.

The German Basic Law's emergency provisions distinguish between four different types of emergency situations: the defense case, in which an armed attack has occurred or is imminently impending; the state of tension, in which war threatens but has not begun; a state of internal emergency affecting the existence or the free democratic basic order of the Federation or a state; and a catastrophe, involving a natural disaster or a particularly serious accident. Each type of emergency is addressed by specific constitutional provisions that define the powers available, the institutions involved, and the temporal limits on emergency authority. This differentiated

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approach, which provides carefully calibrated responses to different types of emergency rather than a single broad emergency power, is significantly more sophisticated than Bangladesh's existing framework and provides a model for the kind of constitutional redesign that Bangladesh's reform process should consider.

The German Constitutional Court's role in reviewing emergency measures, combined with the constitutional guarantee that the court's jurisdiction cannot be suspended even during the most extreme emergency, provides the institutional backbone that makes the German framework genuinely rights-protective rather than merely formal. The court has consistently held that even in genuine security emergencies, the requirements of proportionality, necessity, and respect for the human dignity guarantee of Article 1 apply, and that measures which violate these requirements are unconstitutional regardless of the emergency conditions that prompted them.

CHAPTER EIGHT: REFORM PROPOSALS - A COMPREHENSIVE CONSTITUTIONAL FRAMEWORK FOR EMERGENCY GOVERNANCE

8.1 Principles for Constitutional Reform of Emergency Powers

Drawing on the theoretical frameworks developed in this part, the specific constitutional provisions analyzed, the historical experience of Bangladesh and comparative constitutional systems, and the current reform debate, the following principles for the constitutional reform of emergency powers can be identified as essential to any constitutionally adequate framework.

The first principle is that genuine emergency powers are genuinely necessary in a constitutional order. The founders' decision to omit all emergency provisions from the original 1972 constitution was understandable as a reaction against colonial and Pakistani abuse of emergency powers, but it was constitutionally inadequate because it left the government without authorized mechanisms for responding to genuine crises. A reformed constitutional framework must include carefully designed emergency provisions that acknowledge the reality of genuine emergencies while imposing robust constraints on their abuse.

The second principle is that emergency powers must be formally authorized, publicly declared, and temporally limited. The use of security legislation, preventive detention law, and other quasi-emergency mechanisms to exercise exceptional state powers outside the formal emergency framework must be constitutionally prohibited by ensuring that any measure that has the practical effect of suspending constitutional rights requires the constitutional authorization, formal declaration, and temporal limitation that the constitution requires for emergency power.

The third principle is that emergency powers must be proportionate to the emergency that justifies them. The constitutional framework must include a proportionality requirement, enforceable through judicial review, that prevents the use of emergency powers for political purposes or for the suppression of peaceful political opposition, journalism, and civil society activity that poses no genuine threat to national security.

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The fourth principle is that emergency powers must be subject to continuous democratic accountability. Parliamentary oversight of emergency measures must be meaningful rather than perfunctory, with specific requirements for periodic parliamentary review and renewal of emergency declarations, specific rights of parliamentary minorities to challenge emergency measures, and the requirement of a genuine supermajority for the adoption of the most consequential emergency legislation.

The fifth principle is that judicial review of emergency powers must be guaranteed and effective. The courts must retain jurisdiction over the validity of emergency declarations and emergency measures, must have the capacity to grant effective remedies including the release of unlawfully detained persons, and must have the institutional independence to exercise that jurisdiction without political pressure or interference. The constitutional guarantee of habeas corpus must be preserved even during formal emergencies, subject only to the minimum restrictions that genuine military necessity may require.

The sixth principle is that certain rights must be absolutely non-derogable. The reformed constitutional framework must specify a comprehensive list of rights that may not be suspended under any emergency conditions, going beyond the relatively limited list in the current constitution to include specifically the rights to political expression, political organization, journalistic activity, and access to legal counsel. These specifically protected rights reflect the specific pattern of Bangladesh's emergency abuse and the specific categories of rights whose protection is most essential to the democratic character of the constitutional order.

8.2 The Special Powers Act: The Case for Repeal

The accumulated constitutional analysis of this part leads to a clear conclusion about the Special Powers Act: it must be repealed, and the gaps in Bangladesh's security law that its repeal would create must be filled by legislation that complies with constitutional requirements of individual accountability, due process, proportionality, and judicial oversight.

The case for repeal rather than amendment rests on the fundamental character of the Act's constitutional defects. The substantive authorization of detention on the basis of predicted future conduct is not merely a drafting problem that can be corrected by reforming specific provisions. It is a structural constitutional problem that reflects a fundamental incompatibility between preventive detention of this character and the constitutional guarantee of personal liberty and the rule of law. The specific provisions of the Act have been used for decades to suppress political opposition, and the institutional culture of using the Act for political purposes is deeply embedded in Bangladesh's administrative and police practice. An amended Act will continue to provide the legal basis for the same abusive practices unless the fundamental authorization for detention on security grounds is removed.

The legislation that should replace the Special Powers Act must be designed around the principle of individual criminal accountability rather than preventive administrative detention. Persons who pose a genuine and specific threat to national security or public order should be subject to criminal prosecution under substantive criminal law provisions that are defined with sufficient precision to give individuals fair warning of what conduct is prohibited, that are applied through

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adversarial criminal procedures that include the full range of due process protections, and that are subject to the oversight of independent courts with genuine jurisdiction over both guilt and sentence. The alternative of very short-term administrative detention pending criminal charge, not exceeding 48 to 72 hours in normal circumstances, may be constitutionally justifiable as a tool of crime prevention and investigation, but must be subject to immediate judicial oversight and must terminate in either criminal charge or release.

8.3 The Anti-Terrorism Framework and Constitutional Compliance

Bangladesh's Anti-Terrorism Act of 2009 and its subsequent amendments create a specialized criminal law framework for addressing terrorism, providing for enhanced criminal penalties, specific procedures for the investigation and prosecution of terrorism offences, and measures including asset freezing and travel restrictions for persons suspected of involvement in terrorism. The constitutional dimensions of this framework require attention in the context of the current reform process.

The specific question of whether the Anti-Terrorism Act was constitutionally applied when the Awami League was designated as a terrorist organization, thereby excluding it from the February 2026 elections, is one of the most important unresolved constitutional questions of the transitional period. This exclusion was effected through the use of anti-terrorism legislation, with the interim government asserting that the party's involvement in the July 2024 massacre brought it within the scope of a terrorist organisation. This justification obscures what appears to be a colourable exercise of legal power. Supreme Court Observer

The constitutional requirements for the application of anti-terrorism legislation to a political party include, at minimum, individualized evidence of the party's organizational involvement in acts of terrorism, not merely evidence that some members of the party engaged in violent acts for which individual criminal accountability is appropriate. The democratic principle of political freedom requires that parties, even parties whose leaders and members bear serious criminal responsibility for violent acts, retain the right to participate in democratic elections unless specific constitutional criteria for party dissolution or disqualification are met through constitutionally specified processes. The use of anti-terrorism legislation to collectively disqualify a political party, as opposed to criminally prosecuting individual responsible for specific terrorist acts, represents the kind of instrumentalization of law for political purposes that Bangladesh's reform process is supposed to be moving away from.

The constitutional reform of Bangladesh's anti-terrorism framework must address both the specific problem of the Act's use against political parties and the broader problem of ensuring that the extraordinary powers available under the Act, including asset freezing, enhanced investigation powers, and extended detention pending charge, are subject to effective judicial oversight and are applied only on the basis of individualized evidence of genuine terrorist activity rather than on the basis of political association or opposition activity.

CONCLUDING REFLECTIONS TO PART SEVEN

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The constitutional history of emergency powers in Bangladesh is, at its core, a story of how the instruments of exceptional governance created or permitted by constitutional frameworks have been systematically used not to protect constitutional order but to undermine it. From the original constitution's principled but naive omission of any emergency provisions, through the insertion of emergency powers through amendments that were themselves products of political projects antithetical to constitutional democracy, through the repeated martial law interventions that destroyed constitutional government and then required constitutional validation, through the sophisticated securitization of law through security legislation that operated outside the formal emergency framework, to the extraordinary constitutional moment of July 2024 and the complex constitutional challenges of the transitional period, Bangladesh has lived through virtually every form of the abuse of exceptional state authority that constitutional theory has analyzed.

The intellectual tradition that bears most directly on these constitutional experiences is the one that runs from Carl Schmitt's analysis of the state of exception through Giorgio Agamben's identification of the permanentization of the exception in modern governance to the contemporary scholarship on constitutional resilience and democratic backsliding. What this tradition illuminates about Bangladesh's experience is the fundamental tension between the necessity of emergency powers in any realistic constitutional order and the ever-present danger that those powers, once created and authorized, will be used for purposes antithetical to the constitutional values they are supposed to protect. The resolution of this tension in Bangladesh's specific constitutional context requires not merely better-designed formal emergency provisions but a constitutional culture that treats the exceptional character of emergency governance as a genuine limitation on its use rather than as a license for the exercise of unchecked power.

The reform proposals advanced by the Constitutional Reform Commission and incorporated, with various modifications, in the July Charter represent an important step toward a more constitutionally principled framework for emergency governance. The strengthened parliamentary oversight of emergency declarations, the expanded list of non-derogable rights, the constitutional protection of judicial review of emergency measures, and the reform of security legislation including the Cyber Security Ordinance 2025 all represent positive developments that move Bangladesh's framework in the direction of the international constitutional standards for emergency power. But the unfinished business of the Special Powers Act's repeal, the inadequate constitutional scrutiny of the anti-terrorism framework, and the constitutional questions raised by the transitional period's own emergency-style measures represent continuing challenges that the BNP government's constitutional reform process must address.

The most fundamental lesson of Bangladesh's experience with emergency powers is that the constitutional protection of democracy requires not merely formal provisions but a genuine and deeply internalized commitment among all significant political actors to the principle that the tools of exceptional governance exist to protect the constitutional order rather than to enable its circumvention. Building that commitment, through constitutional education, through the accountability of past abuses, and through the development of institutional cultures that regard emergency power with appropriate suspicion rather than with the enthusiasm of those who have discovered a convenient tool of political control, is the long-term constitutional work that Bangladesh's reform moment has begun but cannot complete.

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FURTHER READING AND KEY SOURCES FOR PART SEVEN

On the constitutional theory of emergency powers, students should consult Rossiter, Clinton, Constitutional Dictatorship: Crisis Government in the Modern Democracies (1948); Schmitt, Carl, Political Theology (1922; English translation 2005); Agamben, Giorgio, State of Exception (2003); Gross, Oren and Ni Aolain, Fionnuala, Law in Times of Crisis: Emergency Powers in Theory and Practice (2006); and Scheppele, Kim Lane, Autocratic Legalism, University of Chicago Law Review (2018).

On democratic backsliding and abusive constitutionalism, students should consult Bermeo, Nancy, On Democratic Backsliding, Journal of Democracy (2016); Landau, David, Abusive Constitutionalism, UC Davis Law Review (2013); Levitsky, Steven and Ziblatt, Daniel, How Democracies Die (2018); and Ginsburg, Tom and Huq, Aziz, How to Save a Constitutional Democracy (2018).

On derogation theory and international human rights law standards for emergency powers, students should consult the UN Human Rights Committee's General Comment 29 on Article 4 of the ICCPR; the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights; and Fitzpatrick, Joan, Human Rights in Crisis: The International System for Protecting Rights During States of Emergency (1994).

On the comparative constitutional law of emergency powers, students should consult the analysis of the Indian Emergency of 1975 to 1977 in Austin, Granville, Working a Democratic Constitution: The Indian Experience (1999); the German emergency powers framework in Kommers, Donald and Miller, Russell, The Constitutional Jurisprudence of the Federal Republic of Germany (3rd edition, 2012); and the American post-September 11 emergency powers jurisprudence as analyzed in Cole, David, Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism (2003).

On Bangladesh's specific experience with emergency powers and security legislation, students should consult the Springer volume chapter by M. Ehteshamul Bari, Emergency Powers and Martial Law under the Constitution of Bangladesh (2023); Hoque, Ridwanul, Judicial Activism in Bangladesh (2011); the Daily Star analysis by Md. Nafis Anowar Santo, Emergency Provisions in Bangladesh Constitution (2026); and the Supreme Court Observer's analysis, Bangladesh: A Year of Unprecedented Constitutional Upheaval (February 2026).

On the Digital Security Act, Cyber Security Act, and their constitutional dimensions, students should consult the Amnesty International briefing, Repackaging Repression: The Cyber Security Act and the Continuing Lawfare Against Dissent in Bangladesh (August 2024); the Human Rights Watch and Robert F. Kennedy Human Rights Center joint statement on emerging digital laws in Bangladesh (February 2025); and the analysis in Recording Law, Bangladesh Data Privacy Laws: Current Framework and Reforms (2026).

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On the July 2024 uprising and the constitutional dimensions of the transitional period, students should consult the Constitutional Reform Commission's January 2025 report; Ali Riaz's analyses in The Diplomat and other venues on the constitutional implications of the uprising; the ConstitutionNet analyses by Haque and Bisarya (December 2025) and Sara Hossain (March 2026); and the Supreme Court Observer's comprehensive analysis of Bangladesh's year of unprecedented constitutional upheaval (February 2026).

End of Part Seven

Part Eight will examine: Local Government, Constitutional Decentralization, and the Architecture of Participatory Democracy in Bangladesh: From the Constitutional Mandate of Article 59 to the Chittagong Hill Tracts Peace Accord, Federal Aspirations, and the Structural Reform of Governance from the Centre to the Periphery.

PART EIGHT

LOCAL GOVERNMENT, CONSTITUTIONAL DECENTRALIZATION, AND THE ARCHITECTURE OF PARTICIPATORY DEMOCRACY IN BANGLADESH: FROM THE CONSTITUTIONAL MANDATE OF ARTICLES 59 AND 60 TO THE CHITTAGONG HILL TRACTS PEACE ACCORD, FEDERAL ASPIRATIONS, AND THE STRUCTURAL REFORM OF GOVERNANCE FROM THE CENTRE TO THE PERIPHERY

PREFACE TO PART EIGHT

There is a particular kind of constitutional tragedy that is quieter and more chronic than the dramatic collapses we associate with coups, emergency declarations, and authoritarian takeovers. It is the tragedy of promises unfulfilled not by a single catastrophic act of betrayal, but by the slow, steady accumulation of centralized indifference, bureaucratic inertia, political calculation, and structural neglect. In Bangladesh, this slower tragedy has played out most consistently and most devastatingly in the domain of local government and constitutional decentralization. Since 1972, the Constitution of Bangladesh has contained a clear and explicit commitment to local governance as an instrument of participatory democracy and grassroots accountability. Since 1972, that commitment has been systematically undermined, frustrated, and reversed by every successive government that held power, regardless of party, ideology, or the circumstances that brought it to office.

The story of local government in Bangladesh is not, therefore, a simple story of constitutional failure in the sense of a document that said nothing useful. The document said something

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extraordinarily useful. Articles 59 and 60 of the 1972 constitution established a framework for local governance that, if fully implemented, would have created some of the most robust decentralized democratic structures in South Asia. The story, rather, is the story of constitutional betrayal in the specific sense identified in Part One of this textbook: the gap between the text and the lived reality, the distance between what the constitution promises and what the political system delivers. Understanding that gap, tracing its origins, analyzing its structural causes, and examining whether the constitutional reform process of 2024 to 2026 offers a genuine path toward closing it, is the central task of this part.

That task is more complex than it might initially appear, because the question of local government and decentralization in Bangladesh cannot be separated from several other constitutional questions of the deepest significance. The relationship between the centre and the periphery in Bangladesh is not merely a question of administrative efficiency or service delivery. It is a question that touches the foundational constitutional debates about the nature of Bangladeshi nationalism, the place of ethnic and cultural diversity within a constitutionally defined Bengali national identity, the relationship between the state and indigenous communities in the Chittagong Hill Tracts, and the unresolved tension between the unitary constitutional model that Bangladesh has always maintained and the federal or quasi-federal aspirations that significant sections of its population have expressed at various points in its history.

This part of the textbook proceeds through eight chapters that together constitute a comprehensive examination of the constitutional dimensions of local government and decentralization in Bangladesh. The first chapter examines the theoretical foundations of decentralization in constitutional and political philosophy, drawing on the traditions of subsidiarity theory, participatory democracy, republican political thought, and contemporary comparative constitutional scholarship to establish the normative framework within which Bangladesh's constitutional provisions must be evaluated. The second chapter provides a detailed textual and jurisprudential analysis of Articles 59 and 60, situating them within the broader structure of the 1972 constitution and examining how their meaning has been interpreted and contested by courts, scholars, and political actors over five decades. The third chapter traces the historical development of local government institutions in Bangladesh from the colonial period through the post-independence era to the present, examining the political economy of centralization that has consistently defeated decentralization imperatives. The fourth chapter undertakes a structural analysis of the crisis of local government in Bangladesh, identifying the specific constitutional, legislative, and institutional mechanisms through which the promise of Article 59 has been systematically frustrated. The fifth chapter addresses the Chittagong Hill Tracts as a site of constitutionally distinct governance challenges, examining the 1997 Peace Accord, its constitutional dimensions, its incomplete implementation, the ongoing conflict in the region, and the relationship between indigenous rights, territorial autonomy, and the constitutional framework. The sixth chapter considers the federal question in Bangladesh, examining comparative models of federalism and their applicability to Bangladesh's specific constitutional context, addressing arguments both for and against constitutional restructuring along federal or quasi-federal lines. The seventh chapter examines the recommendations of the Constitutional Reform Commission and the July National Charter with specific reference to local government and decentralization, placing these proposals in dialogue with the theoretical and historical analysis developed in the preceding chapters. The eighth chapter advances a

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comprehensive set of reform proposals that respond to the structural crisis identified in the analysis.

CHAPTER ONE: THEORIES OF DECENTRALIZATION AND LOCAL GOVERNMENT IN CONSTITUTIONAL AND POLITICAL PHILOSOPHY

1.1 The Philosophical Case for Decentralization: Subsidiarity, Self-Governance, and Human Dignity

The philosophical case for decentralization is not merely pragmatic, though its pragmatic dimensions are powerful. It is grounded, at its deepest level, in a set of propositions about human dignity, political agency, and the proper relationship between individuals and the institutions that govern their lives. Understanding these philosophical foundations is essential for any serious evaluation of Bangladesh's constitutional commitment to local government, because it enables us to assess that commitment against a richer set of normative criteria than the merely administrative or technocratic.

The most important philosophical concept in the theory of decentralization is the principle of subsidiarity, which holds that decisions should be made at the lowest level of governance capable of addressing the matter effectively. Subsidiarity is a principle with deep roots in multiple philosophical traditions. In Catholic social thought, where the term was first systematically developed, subsidiarity expresses the conviction that larger social units, including the state, should not absorb the functions and initiatives of smaller social bodies, including families, local communities, and voluntary associations, because doing so violates both the autonomy of those smaller bodies and the human dignity of the persons who constitute them. Pope Pius XI's encyclical Quadragesimo Anno (1931) provided the classic formulation: "it is an injustice, a grave evil and a disturbance of right order for a larger and higher organisation to arrogate to itself functions which can be performed efficiently by smaller and lower bodies." The state is not abolished by this principle but is given a specific and limited role: to do what smaller bodies cannot do for themselves, and to support and enable those smaller bodies rather than replacing or suppressing them.

The secular philosophical tradition reaches similar conclusions through different routes. Alexis de Tocqueville's celebrated analysis of American democracy in the 1830s identified local self-governance as the essential school of republican citizenship. In Democracy in America, Tocqueville argued that it is in local institutions, in the township, in the county, in the municipal council, that the habits and dispositions of democratic self-governance are formed and maintained. A people that has no experience of governing itself at the local level cannot sustain democracy at the national level, because democracy is not merely a set of formal procedures but a way of being in political relationship that must be practiced, habituated, and culturally embedded. The centralized state, Tocqueville warned, produces docile subjects rather than active citizens. It performs the functions of governance competently, perhaps even efficiently, but at the cost of the political vitality that genuine self-governance generates and requires.

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John Stuart Mill elaborated this Tocquevillian insight in Considerations on Representative Government (1861). Mill argued that local self-government has two distinct values that together constitute an overwhelming case for its preservation. The first is what we might call its educational value: participation in local governance develops the practical political capacities of citizens, teaches them to deliberate, to reason about public interest, to accept compromise, and to take responsibility for collective decisions. The second is its intrinsic democratic value: people have an interest not merely in the outcomes of governance but in the process of self-governance itself. To be governed by others, even well-governed by efficient and benevolent others, is to be denied something important: the experience of political agency and self-determination that is constitutive of full citizenship. For Mill, local government was not merely a means to good administration but an end in itself as a form of democratic self-realization.

The republican political tradition, from Aristotle through Cicero to Machiavelli and Rousseau to the American founders, adds a further dimension to the philosophical case for decentralization. Republicanism, in its classical sense, understands political freedom not as freedom from interference (the liberal negative liberty) but as freedom as non-domination: freedom from the arbitrary power of others over one's life. The republican tradition identifies concentrations of power as the primary threat to this non-domination, and sees the structural dispersion of power through institutions of self-governance as the primary defense against it. A polity in which all significant power is concentrated in a central authority, however formally democratic that authority may be, is one in which the conditions for domination are systematically present: those who control the centre control the periphery, and those who inhabit the periphery are dependent on the goodwill of the centre for the enjoyment of their political rights. Republican constitutionalism requires not merely formal democracy but structural pluralism: the existence of multiple centres of self-governing authority that can check each other and resist the tyrannical consolidation of all power in a single location.

Hannah Arendt, whose political thought drew deeply on the republican tradition while also transforming it, offered a powerful philosophical statement of the value of local self-governance in On Revolution (1963). Arendt lamented the failure of all the great modern revolutions, including the French and American, to secure what she called the "public space" of genuine political participation. The American revolution, despite creating the most enduring constitutional democracy, squandered its greatest opportunity when it failed to establish what Jefferson had called the "ward system," a network of elementary republics at the local level that would have given ordinary citizens a regular and meaningful experience of political agency beyond the periodic act of voting. Without such elementary republics, Arendt argued, citizens are inevitably reduced to spectators rather than participants in political life, and democracy becomes a system of elite competition for the right to govern a politically passive population. This Arendtian insight is directly applicable to Bangladesh, where the failure to create effective local self-governance has produced precisely the pattern of political passivity and elite capture that Arendt identified as the structural consequence of centralization.

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1.2 Contemporary Constitutional Theory on Local Government: Between Pluralism and Integration

Contemporary constitutional theory has engaged deeply with the question of local government and decentralization, and this engagement has produced a sophisticated body of analysis that is directly relevant to Bangladesh's constitutional reform debates. The theoretical terrain is contested, and the disagreements within it reflect genuine normative and empirical uncertainties rather than mere academic disputation.

One of the most important theoretical frameworks is the pluralist tradition in constitutional theory, associated with scholars including Elinor Ostrom, Vincent Ostrom, and the broader public choice school. This tradition argues, contra the progressive administrative state tradition, that the multiplication of governmental jurisdictions produces not inefficiency and confusion but beneficial competition and experimentation. When multiple local governments exist, each serving a relatively mobile population, they compete with each other for residents by offering different packages of public services at different tax rates. This competition disciplines local governments in ways that are impossible in a monopoly-provider structure. It also allows for experimentation: different jurisdictions can try different approaches to public problems, and successful experiments can be adopted by others while failures remain local rather than systemic. Elinor Ostrom's Nobel Prize-winning work on the governance of common-pool resources demonstrated empirically that local communities, when given the institutional space to develop their own governance arrangements, frequently solve collective action problems more effectively than either markets or centralized states.

A contrasting strand of contemporary constitutional theory emphasizes the integrationist dimension of local government: the ways in which local institutions must be constitutionally structured to prevent them from becoming vehicles for local privilege, exclusion, and the perpetuation of inequality. The history of local government in many contexts, including the American South where local "states' rights" was the constitutional cover for racial segregation, demonstrates that decentralization is not inherently democratizing. When local majorities are tyrannous, when local elites capture local institutions, when local governments exclude minority populations from the benefits of self-governance, decentralization becomes a mechanism for the perpetuation of inequality rather than its remedy. This integrationist concern has shaped the development of constitutional doctrine on local government in many jurisdictions, requiring that local self-governance be understood within a framework of national constitutional rights that cannot be curtailed by local majorities.

The reconciliation of the pluralist and integrationist perspectives has been one of the central projects of contemporary constitutional theory on local government. The most sophisticated theoretical frameworks recognize that genuine decentralization requires both: meaningful local autonomy that allows communities to govern themselves in accordance with their own values and priorities, within a framework of national constitutional rights that protects individuals and minorities against the tyranny of local majorities. This dual requirement, local autonomy within national rights protection, is the normative framework within which Bangladesh's constitutional provisions on local government must be evaluated.

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Jurgen Habermas's theory of deliberative democracy has a particular relevance to the question of local government, because the kinds of face-to-face deliberation that Habermas identifies as the ideal of democratic legitimation are most feasible at the local level. When Habermas argues that political decisions are legitimate when they emerge from deliberative processes in which all affected parties have equal opportunity to participate, offer reasons, and challenge the reasons of others, he is implicitly making a case for the kind of local governance that brings citizens into direct relationship with each other and with the political decisions that affect their lives. The town meeting, the village council, the ward committee are all closer to the Habermasian deliberative ideal than the national parliament, not because they necessarily approximate that ideal in practice, but because the scale and intimacy of local governance at least makes such approximation possible in ways that mass national politics does not.

Amy Gutmann and Dennis Thompson's theory of deliberative democracy, developed in Democracy and Disagreement (1996) and Why Deliberative Democracy (2004), similarly points toward the importance of local self-governance as a site of democratic practice. Gutmann and Thompson argue that deliberative democracy requires not merely institutional procedures but a culture of reason-giving and mutual justification. That culture is most naturally cultivated in the contexts of local governance, where citizens must regularly engage with neighbors who share their community but may not share their politics, where the abstract becomes concrete, and where the consequences of political decisions are immediately visible and tangible. The implications for Bangladesh's constitutional reform are clear: local governance is not merely a matter of administrative efficiency but of the cultural conditions for democratic citizenship.

1.3 Federalism, Quasi-Federalism, and the Constitutional Models of Decentralization

Constitutional theory distinguishes between several models of decentralized governance, each with distinct philosophical foundations, structural characteristics, and practical implications. Understanding these models is essential background for the analysis of Bangladesh's specific constitutional choices and the reform options now available.

Federalism in its classic form divides sovereign authority between a national government and constituent state or provincial governments, with each level of government having constitutionally protected authority in its own domain that the other level cannot unilaterally remove. The federal principle, as articulated by its leading theorists from Madison in Federalist No. 51 to Kenneth Wheare in Federal Government (1946) to Daniel Elazar in Exploring Federalism (1987), holds that the division of sovereignty between levels of government is not merely an administrative convenience but a constitutionally entrenched structural guarantee of liberty. Because neither level of government has complete authority over the other, each serves as a check on the other's potential for tyranny. Citizens have recourse to the national government if their state governments oppress them, and have recourse to their state governments if the national government exceeds its authority. The federal structure thus creates what Madison called the "double security" to the rights of the people.

Unitary systems, by contrast, vest sovereign authority in a single national government, with subnational units existing as creatures of that government rather than as co-equal partners in a federal arrangement. Subnational governments in a unitary system exercise delegated authority

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that the national government can, in principle, revoke or modify at will. Bangladesh is and has always been a unitary state, and the 1972 constitution is explicitly organized on unitary principles. This choice was deliberate and reflected specific historical and political considerations, including the experience of Pakistani federalism in which provincial autonomy had been used to perpetuate the exploitation of Bengal by the Pakistani central government, and the fear that decentralization in a newly independent and fragile state might undermine national cohesion and territorial integrity.

Between classical federalism and classical unitary government lies a rich terrain of intermediate models that are increasingly important in contemporary constitutional design. Devolution is the asymmetric delegation of governmental authority to subnational units, as practiced in the United Kingdom's arrangements with Scotland, Wales, and Northern Ireland. Unlike federation, devolution does not constitutionally entrench the authority of subnational units against national override; Parliament retains theoretical supremacy. But in practice, devolved arrangements create political and institutional facts that are very difficult to reverse, and the Scottish experience demonstrates that devolution can generate its own constitutional momentum, creating demands for ever-greater autonomy and ultimately for independence. Asymmetric federalism extends the devolutionary logic by granting different levels of autonomy to different subnational units based on their specific historical, demographic, and political characteristics, as in India's relationship with Jammu and Kashmir (before the 2019 revocation of its special status) or Spain's relationship with the Basque Country and Catalonia.

Cooperative federalism, as practiced in Germany and Australia, emphasizes the shared exercise of governmental authority through institutional mechanisms that require federal and state governments to coordinate their activities rather than operating in separate domains. The German Basic Law's Politikverflechtung, the interweaving of policy-making across levels of government, represents the most developed constitutional model of cooperative federalism, with the Bundesrat serving as the institutional mechanism through which the Lander (states) participate directly in national legislation. This cooperative model has particular relevance for Bangladesh's reform debates, because it suggests the possibility of creating constitutional structures that give subnational units a meaningful voice in national governance without requiring the full restructuring of sovereignty that classical federalism entails.

Comparative constitutional scholarship has increasingly recognized that the formal distinction between federal and unitary systems is less important than the actual distribution of authority in practice. A nominally federal system in which the national government dominates subnational governments through its control of financial resources may produce less genuine decentralization than a formally unitary system with strong constitutional protections for local government autonomy. Bangladesh's constitutional history illustrates this point vividly: the constitution's formal commitment to local government has coexisted with a political practice of centralization that has rendered that commitment largely nominal, demonstrating that formal constitutional provisions are necessary but not sufficient conditions for genuine decentralization.

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1.4 The Fiscal Dimension of Decentralization: Constitutional Theory and Practice

Any serious examination of decentralization must engage with the fiscal dimension, because the autonomy of local governments is ultimately determined not merely by their formal constitutional status but by their fiscal capacity. A local government that lacks the financial resources to perform its functions, that is dependent on central government transfers for the bulk of its revenue, and that has no meaningful authority over its own tax base is not genuinely autonomous regardless of what the constitution says about its powers and functions. The relationship between fiscal federalism and constitutional decentralization is one of the most important and underappreciated dimensions of local governance theory.

Charles Tiebout's classic 1956 article on local public expenditure, which introduced the concept of "voting with one's feet" as a mechanism for revealing preferences about local public goods, identified the fiscal dimension of local governance as central to its efficiency properties. Tiebout argued that a system of competing local jurisdictions, each with its own tax rates and service packages, would allow residents to reveal their preferences about public goods by choosing to live in jurisdictions that best match those preferences, just as consumers reveal preferences about private goods by choosing products in competitive markets. This model has been enormously influential in the theory of fiscal federalism, though its empirical assumptions, particularly the assumption of high residential mobility and the absence of externalities between jurisdictions, have been extensively criticized.

Wallace Oates's framework of fiscal federalism, developed in Fiscal Federalism (1972) and updated in subsequent work, provides a more nuanced theoretical foundation for thinking about the assignment of fiscal responsibilities across levels of government. Oates identified three core governmental functions, stabilization, redistribution, and allocation, and argued that each should be assigned to the level of government best placed to perform it. Macroeconomic stabilization, because it requires economy-wide instruments and because its benefits extend across jurisdictions, should be a national function. Redistribution, because it is undermined by the mobility of wealthy taxpayers and poor recipients between jurisdictions, should also be primarily national. Allocation, the provision of public goods, should be decentralized to the level at which the benefits and costs of the relevant public goods are contained, allowing local preferences to determine local service packages. This framework provides a principled basis for constitutional assignment of fiscal responsibilities that is directly applicable to Bangladesh's reform debates.

The IMF and World Bank have developed extensive practical guidance on fiscal decentralization that reflects both the theoretical insights of fiscal federalism and the practical lessons of decentralization reforms in developing countries. The "golden rule" of fiscal decentralization, as formulated in this body of practice, holds that expenditure decentralization must be accompanied by commensurate revenue decentralization: local governments should not be assigned spending responsibilities without corresponding revenue authority, because the resulting fiscal gap produces either service deficits or chronic dependence on central transfers, both of which undermine the accountability that decentralization is supposed to produce. Bangladesh's constitutional commitment to local government has been consistently undermined by precisely this failure: local governments have been assigned functions without the fiscal resources to

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perform them, creating a structural accountability vacuum that neither central nor local government can fill.

CHAPTER TWO: THE CONSTITUTIONAL ARCHITECTURE OF LOCAL GOVERNMENT IN BANGLADESH: A JURISPRUDENTIAL ANALYSIS OF ARTICLES 59 AND 60

2.1 The Text of Articles 59 and 60: A Close Reading

The constitutional architecture of local government in Bangladesh is established by two articles of the 1972 constitution whose brevity is inversely proportional to their importance. Understanding the precise textual commitments made in these articles, and the interpretive debates that have surrounded their application, is essential to any rigorous jurisprudential analysis of the local government question.

Article 59(1) provides: "Local Government in every administrative unit of the Republic shall be entrusted to bodies composed of persons elected in accordance with law." This provision makes three distinct but interconnected commitments. First, it mandates the existence of local government in "every administrative unit of the Republic," establishing that local governance is not a discretionary policy choice but a constitutional requirement that covers the entire territory of the state. Second, it specifies that local government must be "entrusted to bodies," meaning that a representative institutional structure is constitutionally required, not merely permitted. Third, it requires that these bodies be "composed of persons elected in accordance with law," making the electoral and democratic character of local government a constitutional mandate rather than a legislative option.

Article 59(2) further specifies: "Every such body shall, subject to this constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament." This provision delegates to Parliament the power to define the specific functions of local government, but crucially does so "subject to this constitution," meaning that Parliament's delegation of functions must itself comply with the constitutional mandate of Article 59(1). The provision cannot be read to permit Parliament to assign such minimal functions to local bodies that the constitutional commitment to meaningful local government is rendered illusory.

Article 60 provides: "For the purpose of giving full effect to the provisions of article 59, Parliament shall, by law, confer powers on the local government bodies referred to in that article including power to impose taxes for local purposes, to prepare their budgets and to maintain funds." This article is of enormous constitutional significance for two reasons. First, it uses the mandatory language "shall," meaning that Parliament's conferral of powers on local government bodies is not optional but constitutionally required. Second, and most importantly, it specifically mandates the conferral of three specific categories of power: the power to impose taxes for local purposes, the power to prepare budgets, and the power to maintain funds. These three powers together constitute the fiscal autonomy that, as we have seen in the theoretical framework

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developed above, is an essential precondition for meaningful local self-governance. The inclusion of fiscal autonomy as a specific constitutional requirement, rather than leaving it to legislative discretion, reflects a sophisticated understanding of the relationship between financial resources and genuine political autonomy.

Reading Articles 59 and 60 together, the constitutional commitment is clear and comprehensive: local government in every part of Bangladesh must be democratic (based on election), institutionalized (organized through bodies rather than individual officials), functionally meaningful (performing functions prescribed by Parliament), and fiscally autonomous (empowered to tax, budget, and maintain funds). This is not a vague aspiration but a set of specific and enforceable constitutional requirements.

2.2 The Interpretive History: How Courts and Scholars Have Read Articles 59 and 60

The judicial interpretation of Articles 59 and 60 in Bangladesh has been a story of oscillation between assertive and deferential readings, reflecting the broader patterns of judicial activism and restraint that have characterized Bangladesh's constitutional jurisprudence. Understanding this interpretive history is essential both for tracing how the constitutional commitment to local government has been understood and contested, and for identifying the pathways through which a more robust jurisprudence might be developed.

The most significant early judicial engagement with the local government provisions came in cases challenging the suspension or dissolution of elected local government bodies by executive action. From the earliest years of the republic, elected local government bodies were subjected to dissolution, supersession, and replacement by appointed administrators by executive authorities that found the inconvenience of democratic local governance incompatible with the demands of central policy implementation. The constitutional challenge to these practices required courts to address the question of whether Articles 59 and 60 created enforceable constitutional rights for elected local government bodies against executive dissolution, or whether they merely imposed legislative obligations on Parliament that could be satisfied by legislation conferring broad dissolution powers on the executive.

The High Court Division's jurisprudence on this question developed a distinction between the constitutional requirement that local government exist, which was treated as justiciable and enforceable, and the constitutional content of local government, meaning the specific powers, functions, and protections of local government bodies, which was treated as a matter of legislative discretion. This distinction, while superficially plausible, is constitutionally unsatisfactory because it renders Article 60's mandatory language largely meaningless: if Parliament has unfettered discretion over the powers of local government bodies, the constitutional mandate to "confer powers" on those bodies can be satisfied by conferring minimal powers that are readily removable, rendering the constitutional commitment to fiscal autonomy hollow.

A more assertive constitutional reading of Articles 59 and 60 would hold that those provisions do not merely require the existence of elected local bodies but impose substantive requirements on their constitutional status. On this reading, Parliament's power to define local government

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functions under Article 59(2) is constrained by the constitutional requirement of meaningful local governance, and Parliament's obligation to confer fiscal powers under Article 60 is a genuine constitutional mandate that cannot be satisfied by nominal or revocable conferral. This reading, which draws on the broader principle of constitutional effectiveness, the presumption that constitutional provisions must be interpreted to give them their full intended effect rather than to reduce them to mere formalities, would significantly strengthen the constitutional status of local government in Bangladesh.

The principle of constitutional effectiveness is well-established in comparative constitutional jurisprudence. The German Federal Constitutional Court's doctrine of the "essential content guarantee" (Wesensgehaltsgarantie) holds that constitutional rights have an inviolable core that cannot be eliminated even by legislation acting within the scope of permissible limitation. Applied to Articles 59 and 60, this doctrine would require courts to identify the essential content of the constitutional commitment to local self-governance and to strike down legislation that reduces local government below that essential threshold. The constitutional reform debates of 2024 to 2026 offer an opportunity to entrench this more robust interpretation through explicit constitutional amendment, clarifying that local government autonomy has an inviolable core that neither Parliament nor the executive can eliminate.

The jurisprudential relationship between Article 59 and the constitutional provisions on fundamental rights deserves specific examination. The right to vote, protected under Article 122, has been interpreted by Bangladesh's courts as applying to elections for Parliament and for President, but the relationship between the right to vote and elections for local government bodies has not been systematically explored. If the constitutional mandate of Article 59 is to be given its full effect, the electoral rights of citizens in relation to local government must be understood as constitutionally protected, meaning that arbitrary suspension of local elections and replacement of elected bodies with appointed administrators constitutes not merely a violation of Article 59 but an infringement of the electoral rights protected elsewhere in the constitution. This integrated reading of the constitutional framework would significantly strengthen the legal basis for challenging the practices of executive supersession that have repeatedly rendered the local government provisions nugatory in Bangladesh.

2.3 The Constitutional Status of Local Government: Comparing Bangladesh with South Asian Peers

Situating Bangladesh's constitutional treatment of local government within the comparative South Asian framework illuminates both the relative strength of the formal constitutional commitment and the relative weakness of its implementation. India, Pakistan, Sri Lanka, and Nepal have all made constitutional commitments to local government, but the specific form and strength of those commitments vary considerably, and the pattern of implementation reveals interesting lessons about the conditions under which constitutional commitments to local governance can be effectively realized.

The Indian Constitution's Seventy-Third and Seventy-Fourth Amendments of 1992, which inserted Part IX (on Panchayati Raj) and Part IX-A (on Municipalities) into the constitution, represent the most detailed constitutional specification of local government in South Asia. These

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amendments mandated the holding of elections to Panchayats (rural local governments) and municipalities at regular five-year intervals, established state election commissions to superintend local elections, required the constitution of state finance commissions to recommend the distribution of financial resources between the state and local governments, and created a list of functions (the Eleventh Schedule for Panchayats and the Twelfth Schedule for municipalities) that state legislatures were expected to transfer to local governments. The amendments also made explicit constitutional provision for the reservation of seats for Scheduled Castes, Scheduled Tribes, and women in local government bodies.

The Indian experience with these amendments has been mixed. The electoral mandate has been substantially realized: local elections are now held regularly throughout India, and the Panchayati Raj system has become a significant institutional reality at the village level. But the devolution of functions and finances has been far less successful. State governments have been reluctant to transfer meaningful functions to Panchayats, and the state finance commissions have not consistently recommended adequate financial transfers. The result is a system of local government that is democratically constituted but functionally limited and fiscally dependent, a pattern that closely parallels Bangladesh's own experience despite the more explicit constitutional mandate of the Indian amendments.

Pakistan's approach to local government has been even more troubled, reflecting the country's broader constitutional instability. Pakistan's 1973 constitution makes no mention of local government, leaving the matter entirely to provincial legislation. Local government in Pakistan has consequently been a site of intense political contestation between provincial and national governments, with elected local bodies regularly superseded by military or civilian governments that found them politically inconvenient. The Devolution Plan of 2001, introduced by the military government of General Pervez Musharraf, created a new local government system under the Local Government Ordinance 2001, but this system was specifically designed to weaken the provincial governments (which were dominated by the opposition Pakistan People's Party) rather than to empower local communities. When democratic governments were restored, they promptly replaced the Musharraf local government system, demonstrating the fragility of local governance arrangements that are embedded in legislation rather than constitutional provisions.

Nepal's 2015 constitution, adopted after years of protracted constitution-making negotiations, took the most radical step in South Asian constitutional history by restructuring Nepal from a unitary state into a federal republic with three levels of government: federal, provincial, and local. The constitutional recognition of local government as a co-equal level of governance with its own constitutionally enumerated powers and financial resources represents the fullest constitutional implementation of the decentralization principle in the South Asian region. Nepal's experience with this new constitutional framework, though still in its early years, suggests both the transformative potential and the implementation challenges of full constitutional federalism in a developing country context.

Bangladesh's constitutional commitment to local government, as expressed in Articles 59 and 60, occupies a middle position in this comparative landscape: more specific and mandatory than Pakistan's absence of constitutional provision, less elaborated and less entrenched than Nepal's federal constitutional framework, and somewhat less detailed than India's Seventy-Third and

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Seventy-Fourth Amendments. The challenge for Bangladesh's constitutional reform is to move from this intermediate position toward a constitutional framework that gives local self-governance the degree of entrenchment and institutional protection that its democratic importance requires.

CHAPTER THREE: THE HISTORICAL DEVELOPMENT OF LOCAL GOVERNMENT IN BANGLADESH: FROM COLONIAL STRUCTURES TO THE CRISIS OF THE POST-INDEPENDENCE STATE

3.1 The Colonial Legacy: Local Self-Government as Administrative Technique

The history of local government in Bangladesh begins, as so much of the country's institutional history must, with the colonial period. Understanding the colonial inheritance is essential not merely as historical background but as a diagnostic tool: many of the structural features of Bangladesh's local governance that are most problematic today, including the domination of local institutions by appointed bureaucrats rather than elected representatives, the subordination of local bodies to the central administration, and the use of local governance as an instrument of central control rather than popular self-determination, have direct colonial ancestry.

The British colonial administration in Bengal approached local government primarily as a technique of administrative efficiency rather than as an instrument of democratic self-governance. The creation of local bodies by the British was motivated not by any philosophical commitment to popular self-government but by the practical necessity of extending administrative reach into rural areas at a cost that the colonial treasury could sustain. The Bengal Local Self-Government Act of 1885, which created District Boards and Local Boards in Bengal, is the foundational legislation of the formal local government system in Bangladesh's territory. The 1885 Act established popularly elected members alongside official members appointed by the government, with the result that elected members were consistently a minority in the governing bodies and the bureaucratic apparatus retained effective control over local decision-making.

The pattern established by the 1885 Act, elected members as a minority constituency within a bureaucratically dominated system, persisted through subsequent legislative reforms and remained characteristic of local government in Bangladesh well into the post-independence period. The cultural and institutional legacy of this colonial arrangement was profound: it established the expectation, among both bureaucrats and local politicians, that local government was primarily an administrative apparatus of the central state rather than an instrument of popular self-determination. When post-independence governments spoke of local government reform, they were typically reforming this administrative apparatus rather than replacing it with a genuinely autonomous system of democratic self-governance.

The Bengal Village Self-Government Act of 1919, passed in the aftermath of the Montagu-Chelmsford reforms that introduced a measure of Indian participation in provincial governance, created the Union Board as the lowest level of formal local government, covering a group of

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villages and responsible for basic rural administration including road maintenance, dispute resolution, and sanitation. The Union Board was nominally elected, but the franchise was highly restricted and the financial resources available to the boards were minimal. The Union Board of the 1919 Act is the ancestor of the Union Parishad that remains today the lowest tier of Bangladesh's local government structure, and its structural weaknesses, narrow fiscal base, bureaucratic dependence, and ambiguous relationship with the democratic mandate, were inherited by its successor.

The Pakistan period (1947 to 1971) brought significant changes to the formal structure of local government in the territory that would become Bangladesh, but did not fundamentally alter the relationship between local institutions and the central state. The Basic Democracies Scheme introduced by General Ayub Khan in 1959, which created a system of "Basic Democrats" elected from small constituencies (Union Councils in rural areas, Ward Committees in urban areas) who then served as both the electoral college for the national executive and as the governing bodies of local councils, was a particularly instructive episode. The Basic Democracies system was explicitly designed not to empower local communities but to create a controlled form of mass political participation that would legitimate the military government without threatening its control. This instrumentalization of local governance for the purposes of central power, using the forms of democratic local government while maintaining the substance of centralized control, became a recurring pattern in both Pakistani and Bangladeshi political history.

3.2 The Post-Independence Period: Constitutional Promise and Political Reality (1972 to 1990)

The 1972 constitution's commitment to local government represented a significant break with the colonial tradition of treating local institutions as administrative appendages of the central state. The specific inclusion of Articles 59 and 60 reflected the influence of progressive constitutional thinkers who recognized that political independence without genuine local self-governance would merely transfer the colonial pattern of centralization from British to Bangladeshi hands. Sheikh Mujibur Rahman's government had, moreover, made specific commitments during the independence struggle to a system of governance that would bring power to the grassroots, reflecting the aspiration for social transformation that had animated the liberation movement alongside its national independence goals.

The gap between this constitutional promise and political reality opened immediately and widened rapidly. The Mujib government's approach to local government in the early post-independence years was characterized by the systematic subordination of elected local bodies to the ruling Awami League's organizational structure and to appointed bureaucratic administrators. District administration remained firmly in the hands of the Deputy Commissioner, a civil service official appointed by the central government, who exercised administrative authority that far exceeded that of any elected local body. The elected Union Parishads, which were the primary vehicle for constitutional local governance at the village level, were consistently bypassed by the administration, underfunded by the central government, and politically subordinated to the party structure.

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The constitutional crisis of 1974 to 1975, which culminated in the establishment of BKSAL as the single national party and the amendment of the constitution to institute a presidential system with Sheikh Mujibur Rahman as President for life, effectively ended whatever prospect existed for the development of genuine constitutional local governance. The introduction of Zila (district) administration under the 1975 amendments, which replaced elected local bodies with administrative structures headed by appointed officials, was the clearest expression of the Mujib government's shift from the constitutional commitment to democratic decentralization toward a model of centralized administrative control dressed in the language of local government.

The periods of military rule under Ziaur Rahman (1977 to 1981) and Hussain Muhammad Ershad (1982 to 1990) produced distinctive approaches to local government that are instructive precisely because of their combination of rhetorical commitment to decentralization with political practice of centralization. Ziaur Rahman's government introduced the Gram Sarkar (village government) system through administrative order, creating ward-level committees in rural areas that were presented as instruments of grassroots democracy but were in practice tools of the ruling Bangladesh Nationalist Party's rural organization. The Gram Sarkar was subsequently abolished by the Ershad government, which introduced its own decentralization initiative, the Upazila (subdistrict) system, under the Local Government (Upazila) Ordinance of 1982.

The Ershad government's Upazila system is particularly important for understanding the structural dynamics of local government reform in Bangladesh, because it represents the most ambitious attempt at constitutional decentralization in the post-independence period before the 2024 reform era, and its failure is enormously instructive. The Upazila system created elected councils at the subdistrict level, with a directly elected Upazila Parishad chairman and provisions for the transfer of significant administrative and development functions from the central ministries to the Upazila administration. The system also established a new administrative tier between the district and the union, creating an intermediate level of governance that was intended to serve as the primary vehicle for development administration.

The Upazila system had serious structural flaws from the beginning. The elected Upazila Parishad was given nominal governance responsibilities, but the real administrative authority at the Upazila level remained with the Upazila Nirbahi Officer (UNO), a civil service official appointed by and accountable to the central government rather than to the elected Parishad. The UNO exercised executive authority over government programs and resources at the Upazila level, while the elected Parishad was reduced to advisory and ceremonial functions. This structural arrangement, in which elected democratic bodies nominally oversee but in practice merely observe the exercise of administrative authority by appointed officials, is the defining characteristic of Bangladesh's local government system and its most serious constitutional deficiency. The formal structures of democratic local governance exist, but the substance of administrative authority remains with the bureaucracy.

When the democratic transition of 1990 to 1991 restored parliamentary government, both the Awami League and the Bangladesh Nationalist Party, despite their rhetorical commitment to local government reform, effectively abolished the Upazila system by withdrawing its elected component. The Upazila tier was retained as an administrative structure, but the elected Parishad

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was replaced by a committee of Members of Parliament from the constituency, creating the perverse arrangement in which national legislators controlled local administration, eliminating whatever residual accountability the elected Parishad had provided. This abolition of the Upazila Parishad by the first democratic governments is one of the clearest indicators of the gap between rhetoric and reality in Bangladesh's approach to local governance: both major parties, when they held power, found the existence of elected local bodies a political inconvenience rather than a constitutional obligation.

3.3 The Democratic Era: Cycles of Reform and Reversal (1991 to 2024)

The democratic era from 1991 to 2024, dominated by the alternating governments of the Awami League and the Bangladesh Nationalist Party, produced a pattern of local government reform that can best be described as cyclical and largely cosmetic: each government introduced modifications to the local government framework, typically motivated by the desire to strengthen its own party organization at the local level and weaken its predecessor's, while maintaining the fundamental structural features of bureaucratic dominance and fiscal dependence that prevented local governments from functioning as genuine instruments of democratic self-governance.

The Local Government (Union Parishads) Act of 2009, passed during the Awami League's second major period in government, introduced several significant changes to the legal framework of the most basic tier of local government. The Act mandated the direct election of Union Parishad members from specific wards, required the reserved seats for women to be directly elected rather than nominated, and established provisions for ward-level committees as sub-Parishad deliberative bodies. These changes represented genuine improvements in the democratic character of Union Parishads, but did not address the fundamental structural problems of fiscal dependence and bureaucratic domination.

The Upazila Parishad Act of 2009 restored the elected Upazila Parishad, creating directly elected Upazila Parishad chairmen and vice-chairmen. This was a significant step toward restoring the democratic content of the Upazila tier that had been abolished in the early 1990s. However, the Act retained the structural ambiguity that had plagued the Ershad government's Upazila system: the relationship between the elected Parishad and the UNO was not clearly resolved in favor of elected democratic authority, and the provision in the Act that designated elected Members of Parliament as "advisers" to the Upazila Parishad created a structural mechanism through which national legislators could continue to exercise influence over local governance in ways that compromised the accountability of the local democratic body.

The practice of political capture of local government, through which ruling party candidates were systematically favored in local elections and opposition party members were systematically excluded from participation in local governance, became increasingly pronounced during the Awami League's extended tenure from 2009 to 2024. The elimination of competitive elections at the national level that characterized the Hasina government's later years was replicated at the local level, with Awami League-affiliated candidates winning local elections through a combination of electoral fraud, intimidation, and the administrative advantages that governing party candidates enjoyed. By the time of the July 2024 uprising, local government in Bangladesh

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had become, in much of the country, a single-party administrative apparatus rather than a genuinely democratic system of local self-governance.

The Zila (district) Parishad, the third tier of Bangladesh's formal local government structure covering the district level, existed largely as a constitutional fiction throughout most of the democratic era. Article 59's requirement of elected local government in "every administrative unit" clearly encompasses the district level, but Zila Parishads remained appointed bodies for most of this period, with elections held only sporadically and in a manner that reinforced the ruling party's control. The District Council Act of 1988 provided a formal legal basis for Zila Parishads, but the political will to create genuinely democratic district-level governance remained consistently absent from successive governments that recognized the Zila Parishad's potential as a power center that could challenge central authority.

The urban local government system, consisting of city corporations for the major urban centers and municipalities (Pourashava) for smaller towns, presents a somewhat different pattern. City corporations in Dhaka, Chittagong, Rajshahi, Sylhet, Barishal, Comilla, Gazipur, and Mymensingh, and Pourashava in smaller urban centers, have been subject to more regular elections than rural local bodies, reflecting the political salience of urban constituencies. Dhaka South City Corporation and Dhaka North City Corporation have been particularly significant political arenas. However, urban local governments share the same structural problems of fiscal dependence and bureaucratic overlay that afflict rural local bodies, and the extraordinary growth of Dhaka as a megacity has been accompanied by a complete failure of urban governance to manage that growth in a manner that provides adequate services and infrastructure for its population.

The proliferation of development authorities, statutory corporations, and sectoral agencies that operate in parallel with urban local governments, including the Rajdhani Unnayan Kartripakkha (RAJUK), the Capital Development Authority for Dhaka, has created a deeply fragmented urban governance landscape in which multiple agencies with overlapping and conflicting jurisdictions compete for control over the same physical territory and the same infrastructure. RAJUK, which is responsible for urban planning, building regulation, and development in Dhaka, exercises authority that is crucial to the quality of urban life but is completely outside the control of any elected body. The result is a form of urban non-governance in which planning decisions are made by agencies accountable to no democratic constituency, while elected city corporations are responsible for services they have neither the authority nor the resources to provide adequately.

CHAPTER FOUR: THE STRUCTURAL CRISIS OF LOCAL GOVERNMENT: DIAGNOSING THE ANATOMY OF CONSTITUTIONAL FAILURE

4.1 The Five Dimensions of Local Government Crisis in Bangladesh

The chronic failure of local government in Bangladesh, the gap between the constitutional promise of Articles 59 and 60 and the political reality of centralized governance, can be analyzed along five distinct but interconnected dimensions: the fiscal dimension, the functional dimension,

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the electoral dimension, the administrative dimension, and the accountability dimension. Each of these dimensions represents a specific structural failure that would need to be addressed by any comprehensive reform, and the interrelationship among them means that partial reforms addressing only one or two of these dimensions without addressing the others are likely to produce limited results.

The fiscal dimension is arguably the most fundamental. Article 60's constitutional mandate that local governments be empowered to impose taxes for local purposes, prepare their budgets, and maintain their own funds has been satisfied in a nominal and wholly inadequate manner throughout Bangladesh's post-independence history. Union Parishads do have the legal authority to levy taxes on holdings and certain activities, but the rates permitted by law are extremely low, the assessment and collection mechanisms are weak, and the administrative capacity required to administer even these minimal fiscal instruments is frequently absent. The result is that local governments at all tiers are overwhelmingly dependent on central government transfers (known as Annual Development Programme allocations and block grants) for the vast majority of their financial resources.

This fiscal dependence has several devastating consequences for local governance. It destroys local accountability, because local politicians and administrators are accountable not to local taxpayers for the management of locally raised revenue, but to central government officials for compliance with the conditions attached to central transfers. It creates perverse incentives for local officials to cultivate relationships with central government patrons rather than local constituencies, since the path to resources runs through the central bureaucracy rather than through local democratic legitimacy. It makes local governments vulnerable to political manipulation by the central government, which can reward cooperative local bodies with increased transfers and punish resistant ones by withholding them. And it prevents local governments from developing the financial management capacity that effective governance requires, because the absence of own-source revenue eliminates the institutional imperative to develop local fiscal administration.

The functional dimension of the crisis reflects the extreme mismatch between the functions nominally assigned to local governments and the resources, authority, and capacity actually available to them to perform those functions. The Local Government Acts nominally assign to Union Parishads a wide range of functions including rural infrastructure maintenance, primary health and education oversight, social welfare programs, dispute resolution, and agricultural extension. In practice, however, most of these functions remain effectively controlled by central government agencies operating at the local level: the upazila offices of central ministries continue to exercise direct administrative control over education, health, agriculture, and welfare programs, leaving elected local bodies with limited real authority over the services that most directly affect their constituents' lives.

This functional hollowing of local government is both a cause and a consequence of the broader political economy of centralization that characterizes Bangladesh's governance. Central government ministries and agencies resist the transfer of functions to local bodies because functions mean resources, and resources mean power. Line ministry officials posted at the local level have an institutional interest in maintaining central control over programs and funds, as this

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control is the source of their own local authority and the opportunities for discretionary allocation that are part of the political economy of governance at every level. The elected local bodies, for their part, lack the political power to compel functional transfers against the resistance of the bureaucracy, because they are fiscally dependent on the very central government whose agencies they are supposed to oversee.

The electoral dimension of the crisis reflects the systematic manipulation and instrumentalization of local elections for partisan purposes that has characterized most periods of Bangladesh's democratic history. Local elections are constitutionally required under Article 59, but the constitutional mandate does not specify any particular electoral system, any independent electoral administration, or any procedural requirements that would ensure the integrity of local electoral contests. The Election Commission's jurisdiction over local elections has been contested in practice, with the central government retaining significant influence over local electoral administration through its control of the district and upazila administrative apparatus. The result has been a pattern in which local elections, particularly in rural areas, are frequently held under conditions that systematically favor the ruling party's candidates, through administrative discrimination, intimidation, fraud, and the exploitation of incumbency advantages.

The administrative dimension of the crisis reflects the persisting colonial legacy of bureaucratic domination of local governance. The constitutional and legislative framework provides for elected local bodies, but the administrative apparatus at the local level remains a hierarchical extension of the central civil service, with officials posted by and accountable to the central government rather than to local democratic institutions. The UNO at the Upazila level, the District Commissioner at the district level, and their subordinate officials collectively constitute an administrative network that reaches every corner of Bangladesh but is oriented upward toward the central government rather than outward toward local communities. The elected local bodies exist alongside this bureaucratic network but have no effective authority over it, creating what scholars of local government in South Asia have described as a system of "dual governance" in which two parallel administrative structures, one democratic and one bureaucratic, compete for authority over the same population.

The accountability dimension encompasses the failure of any effective mechanism for holding local government accountable either to local constituents or to higher tiers of government for the performance of their functions. The combination of fiscal dependence, functional hollowing, electoral manipulation, and bureaucratic domination produces a local governance system in which no one is genuinely accountable to anyone. Elected local politicians are not accountable to their constituents because they control few functions and fewer resources. Central ministry officials operating locally are not accountable to local politicians because they are not subject to local political oversight. Central ministry officials are not accountable to central political principals because local administration is too complex and dispersed to be effectively monitored from Dhaka. The result is a system that combines the formal apparatus of democratic local governance with the substantive accountability of no governance at all.

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4.2 The Political Economy of Centralization: Why Reform Fails

Understanding why these structural failures persist despite decades of reform rhetoric requires an analysis of the political economy of centralization in Bangladesh: the specific patterns of incentives and interests that make centralization self-perpetuating even in the face of its manifest governance failures.

The key insight from the political economy literature on decentralization is that centralization is not merely a policy mistake that better-informed policymakers would correct. It is a rational equilibrium outcome from the perspective of the political actors whose interests it serves. Centralization concentrates resources and patronage at the centre, making the centre the indispensable patron for anyone who wants access to state resources. This patronage function of centralization is of enormous value to central political elites: it gives them leverage over local politicians, local bureaucrats, and local communities that they would lose if those communities were genuinely self-governing and fiscally autonomous.

In Bangladesh's specific political context, the patronage value of centralization has been particularly powerful because of the weakness of alternative forms of political organization. In the absence of strong programmatic political parties, policy-based electoral competition, or robust civil society organizations capable of holding both central and local governments accountable, Bangladeshi politics has been organized around personalistic networks of patron-client relations in which access to state resources is the primary currency of political power. Local government reform that would give local communities genuine fiscal autonomy and administrative authority would directly threaten this patronage system, because it would reduce the dependence of local politicians and communities on central patrons and give them alternative sources of political power and resources.

The Bangladesh Nationalist Party and the Awami League, despite their rhetorical differences on many policy questions, have shared a common institutional interest in maintaining the centralized patronage system that local government reform would disrupt. When the Awami League was in power, it used central control over local administration to distribute development resources to favored constituencies and withhold them from opposition strongholds. When the BNP was in power, it did the same. Each party found that the apparatus of centralized local administration, which its predecessor had built and expanded, was an indispensable tool of political management, and neither was willing to deconstruct it in favor of genuine local autonomy.

This political economy analysis has important implications for the constitutional reform agenda. Legal and constitutional changes, however well-designed, cannot overcome the political economy of centralization unless they are accompanied by institutional changes that alter the incentive structure faced by political actors. The constitutional entrenchment of local government autonomy is a necessary condition for genuine decentralization, but it is not sufficient: it must be combined with changes to the electoral system, the fiscal structure, the civil service management, and the political party system that reduce the patronage value of centralization and create positive incentives for genuine local self-governance.

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The July National Charter's commitment to "strengthening of local government" as one of its thirty consensus reform proposals, combined with the Constitutional Reform Commission's recommendations on decentralization, represents an important opportunity to address this political economy challenge. But the history of failed local government reform in Bangladesh counsels against optimism about reforms that are implemented by the same political parties whose interests are served by the status quo of centralization, without the structural incentive changes that would make genuine decentralization in those parties' political interest.

4.3 Women's Representation in Local Government: Constitutional Requirements and Political Reality

The question of women's representation in local government is a dimension of the local governance crisis that deserves specific attention, because it illustrates both the potential and the limitations of constitutional mandates for transforming deeply entrenched structural inequalities.

Bangladesh has had one of the most extensive formal systems of gender reservation in local government in South Asia. Since 1997, one-third of seats in Union Parishads have been reserved for women, a proportion that makes Bangladesh's formal gender quota system among the most generous in the region. The subsequent legislative changes, including the introduction of direct election for reserved seats (replacing the earlier appointment system), have strengthened the democratic character of women's representation at the local level. By the numbers, Bangladesh has achieved substantial female representation in local government: hundreds of thousands of women have served in elected local government positions over the past three decades, making local government one of the primary pathways for women's entry into political life in Bangladesh.

However, the formal achievement of quantitative representation has not been matched by qualitative empowerment. Research on women in Bangladeshi local government consistently documents a pattern in which women members, particularly those occupying reserved seats, are systematically marginalized in practice: excluded from key decision-making, denied access to information about government programs and resources, subjected to harassment and intimidation by male colleagues, and dependent on male family members for the political support that makes their positions viable. The reserved seats, rather than constituting genuine political representation for women, have in many cases become vehicles for extending the political influence of male family members through female proxies, a phenomenon so widespread that it has acquired the local designation of "women in politics through family connections."

This gap between formal representation and substantive empowerment illustrates a broader principle about the relationship between constitutional mandates and social change: constitutional provisions can open formal pathways for marginalized groups, but they cannot by themselves overcome the social, cultural, and economic structures that prevent those groups from exercising meaningful political agency. Genuine women's empowerment in local governance requires not merely reserved seats but changes in political party culture, access to information and financial resources, protection from harassment and discrimination, and the broader social conditions that enable women to exercise political leadership independently rather than as proxies for male relatives.

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The Constitutional Reform Commission's recommendations on local government include proposals for strengthening women's representation in ways that go beyond the existing quota system, including requirements that women chair specific standing committees of local bodies, that local governments develop gender-responsive budgeting processes, and that separate ward committees with effective authority be created to address gender-specific governance issues. These proposals, if implemented, could move Bangladesh's formal system of women's reservation in local government closer to genuine substantive representation.

CHAPTER FIVE: THE CHITTAGONG HILL TRACTS: INDIGENOUS RIGHTS, AUTONOMY, AND THE CONSTITUTIONAL FRAMEWORK

5.1 The CHT as a Constitutional Anomaly: Geography, History, and Governance

The Chittagong Hill Tracts region of southeastern Bangladesh represents the most complex and most constitutionally distinctive governance challenge in the entire country. Covering approximately 13,291 square kilometers, an area roughly one-tenth of Bangladesh's total territory, the CHT is home to more than fifty distinct indigenous ethnic groups, including the Chakma, Marma, Tripura, Mro, Tanchangya, Khumi, Bawm, Khyang, Pangkhua, Chak, and others, who collectively represent approximately 1.6 million people according to the 2022 census. These communities, commonly referred to collectively as the Jumma peoples (though this designation is not accepted by all groups), speak dozens of different languages, practice diverse religious traditions including Buddhism, Hinduism, Christianity, and various animist systems, and maintain customary governance institutions, economic practices, and cultural traditions that are profoundly different from those of the Bengali majority population.

The constitutional significance of the CHT derives from the fundamental tension between the constitution's commitment to unitary governance under a single Bengali national identity and the historical, cultural, and political reality of the CHT's indigenous communities, whose relationship to that national identity has been profoundly ambivalent. Article 6(2) of the constitution, as amended by the Fifteenth Amendment, declares that "the citizenship of Bangladesh shall be known as Bangladeshi," a provision that was specifically framed as part of the constitutional resolution of the question of national identity. But the question of what it means to be Bangladeshi for communities that do not share the Bengali language, Bengali cultural heritage, or the specific historical experience of the Liberation War has never been satisfactorily resolved in constitutional terms.

The pre-independence history of the CHT is essential context for understanding its current constitutional situation. The CHT was administered under a special regime during the British colonial period, established by the Chittagong Hill Tracts Regulation of 1900, which created a system of governance that recognized the customary authority of indigenous chiefs (the Raja and Headmen system) while maintaining British administrative oversight. The colonial governance model acknowledged, in practice if not in constitutional principle, that the CHT required a different governance approach than the plains districts of Bengal, reflecting the distinctive cultural, geographic, and political characteristics of the region. The 1900 Regulation's provisions

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for the exclusive residency of indigenous peoples in the reserved CHT areas, and its restrictions on Bengali settlement in the region, represented a form of territorial protection for indigenous communities that, while colonial in origin, served to maintain the demographic and cultural character of the region.

The partition of British India in 1947 assigned the CHT to Pakistan despite the presence of a Hindu Chakma majority in the region, a decision that reflected the geographic logic of partition (the CHT was surrounded by Pakistani territory) rather than the demographic logic of majority-rule self-determination. The first years of Pakistani rule saw the erosion of the 1900 Regulation's protections through administrative decisions that opened the CHT to Bengali settlement and promoted extractive development projects, most dramatically the construction of the Kaptai Dam in 1962, which flooded approximately 40% of the CHT's most fertile agricultural land and displaced an estimated 100,000 mostly Chakma people, creating a refugee crisis whose consequences are still unresolved today.

The 1971 liberation struggle and the creation of Bangladesh introduced new complications for the CHT. The liberation movement was organized around a Bengali national identity, and the CHT's indigenous communities, who did not share that identity, were ambivalently positioned in relation to the liberation movement: some communities participated in the resistance against the Pakistani army, while others remained cautious about a liberation movement whose Bengali nationalist ideology seemed to offer little space for their own ethnic and cultural distinctiveness. When Bangladesh achieved independence and adopted its 1972 constitution, the constitution's commitment to "Bengali nationalism" as one of its fundamental principles, combined with the formal abolition of the 1900 Regulation's special protections for the CHT, created the constitutional framework within which the subsequent CHT conflict would unfold.

5.2 The Armed Insurgency and the Road to the Peace Accord

The armed insurgency in the CHT, which began in 1977 under the leadership of the Parbatya Chattagram Jana Samhati Samiti (PCJSS) and its military wing the Shanti Bahini, was a direct response to the combination of demographic displacement, cultural assimilation pressure, and political marginalization that the indigenous communities experienced in the post-independence period. The specific triggers for the insurgency included the government-sponsored settlement of Bengali civilians in the CHT from the late 1970s onward, which altered the demographic balance of the region in ways that threatened indigenous communities' continued existence as territorial majorities in their ancestral lands, and the systematic exclusion of CHT indigenous peoples from the political institutions of the new state.

The demographic transformation of the CHT during this period is one of the most consequential and contested facts in the entire CHT debate. The indigenous population of the CHT constituted approximately 99% of the region's inhabitants at the time of Bangladesh's independence in 1971. By the 2022 census, the indigenous proportion had fallen to approximately 51%, with Bengali settlers constituting approximately 49% of the population. This demographic shift, which occurred over a period of approximately fifty years, was not primarily the result of natural population growth or voluntary migration. It was the result of specific government policies of settler placement in the CHT, implemented by successive military and civilian governments as a

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deliberate strategy of demographic integration that would reduce the demographic distinctiveness of the indigenous communities and thereby reduce their political claims to special governance arrangements.

The Shanti Bahini's armed insurgency, which was conducted from bases in neighboring Indian states of Tripura and Mizoram and at its peak involved several thousand armed fighters, created a security situation that the Bangladesh Army responded to with extensive counterinsurgency operations. The human costs of the conflict were enormous on all sides: thousands of lives were lost, tens of thousands of indigenous people were displaced to refugee camps in India, and systematic human rights violations, including extrajudicial killings, forced disappearances, rape, and the destruction of villages, were documented by human rights organizations on both sides of the conflict.

The peace negotiations that led to the 1997 Peace Accord were initiated under the Sheikh Hasina government in 1996 and concluded through a negotiation process that involved both the national government and the PCJSS leadership, with the Indian government playing a supportive behind-the-scenes role. The Accord was signed on December 2, 1997, by Abul Hasnat Abdullah, chairman of the National Committee on CHT Affairs, on behalf of the government, and by Jyotirindra Bodhipriya Larma (Shantu Larma), president of the PCJSS, on behalf of the indigenous communities. The Accord's signing marked the end of twenty years of armed conflict and the beginning of what was intended to be a comprehensive political settlement of the CHT question.

5.3 The Constitutional Dimensions of the 1997 Peace Accord

The CHT Peace Accord of 1997 is one of the most constitutionally complex documents in Bangladesh's legal history, and its relationship to the constitution raises fundamental questions about the limits of executive authority, the constitutional status of treaty obligations, and the relationship between special governance arrangements and the principle of equal citizenship that the constitution otherwise maintains.

The Accord is organized in four parts addressing, respectively, general matters including the definition of the CHT as a "tribal-inhabited region" (an important but contested characterization); law and administration matters including the creation of a Regional Council and the devolution of powers to the Hill District Councils; land and land management matters; and the rehabilitation of refugees and displaced persons. The Accord makes extensive provision for special governance arrangements in the CHT through the Regional Council, established by the CHT Regional Council Act of 1998, and the three Hill District Councils (for Rangamati, Bandarban, and Khagrachhari), established under amended versions of the Hill District Council Acts originally passed in 1989.

The Regional Council created by the Accord is constitutionally novel in several respects. It is a unique governance body without precedent in Bangladesh's constitutional framework: it is not a local government body of the kind contemplated by Articles 59 and 60, because it exercises authority over matters that go beyond the conventional functions of local government. It is not a federal state with constitutionally protected sovereignty, because it exists within the framework

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of the unitary constitution and is subject to national law. It occupies a constitutional space between local government and federal autonomy that the constitution itself has never clearly defined or authorized.

This constitutional ambiguity is one of the sources of the Accord's implementation problems. Because the constitutional basis of the Regional Council is unclear, both the central government and the Supreme Court have been uncertain about the extent of the Council's authority and the enforceability of its powers against central government agencies that decline to transfer functions or resources. The legal challenge to the Accord filed in the Supreme Court, which is discussed below, reflects this constitutional ambiguity: if the constitution does not clearly authorize special governance arrangements for the CHT that differ from those applicable elsewhere in Bangladesh, the Accord's provisions may be constitutionally vulnerable on the ground that they create differential treatment of citizens inconsistent with the equal protection guarantee.

The constitutional provision most relevant to the CHT Accord is Article 28, which guarantees equal rights for all citizens without discrimination on grounds including race and religion. The CHT Accord's provisions for indigenous-only voting rights in Hill District Council elections (pending the resolution of the voter registration issue), the recognition of customary land rights of indigenous communities, and the restrictions on land transfers to non-indigenous persons in the CHT all create forms of differential treatment based on ethnic identity that require constitutional justification. The strongest available constitutional justification is the one recognized by international human rights law: that differential treatment of historically marginalized and constitutionally protected indigenous communities in order to secure their substantive equality and preserve their cultural survival is not discrimination in the constitutionally prohibited sense but affirmative measures for the achievement of genuine equality.

5.4 The Implementation Crisis: Twenty-Seven Years of Non-Compliance

The implementation record of the 1997 Peace Accord is one of the most documented cases of treaty non-compliance in South Asian history, and its examination reveals systematic patterns of constitutional and political failure that speak directly to the broader questions about local government and decentralization that this part of the textbook addresses.

The most fundamental implementation failure is the continued presence of temporary military camps in the CHT, which the Accord required to be withdrawn to permanent cantonments. The Accord specifically provided that all "temporary" military camps established during the conflict period would be closed and that the military presence in the CHT would be reduced to what was necessary for normal security functions. Successive governments have acknowledged this provision in public statements while consistently failing to implement it, maintaining a military presence in the CHT that far exceeds what any plausible assessment of normal security needs would require. The military's continued presence in the CHT is both a practical obstacle to the full implementation of the Accord, because it maintains a security environment in which indigenous communities' political activities are subject to military oversight, and a constitutional problem, because the permanent deployment of the military in peacetime conditions in a civilian-

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governed region raises fundamental questions about the relationship between military and civilian authority.

The land question is the most intractable of all the Accord's implementation failures, and the one with the most immediate human consequences. The Accord provided for the creation of a Land Commission to resolve land disputes in the CHT, recognizing that the mass displacement of indigenous communities through both the settler movement and the military operations of the conflict period had created a complex tangle of competing claims that required a specialized resolution mechanism. The Land Commission was eventually established under the CHT Land Dispute Resolution Commission Act of 2001, but its functioning has been systematically obstructed: the Commission's jurisdiction has been contested, its membership has been disputed, its rules of procedure took years to finalize, and in practice it has resolved extremely few of the many thousands of pending land disputes.

The voter registration issue identified in Chapter 5.3 above represents an unresolved constitutional tension at the heart of the Accord. The Accord's provision for indigenous-only elections to the Hill District Councils requires, as a precondition, that Bengali settlers be removed from the voter rolls in the CHT's three hill districts. This removal is in tension with the constitution's guarantee of voting rights to all resident citizens, and the Supreme Court's intervention on this question has effectively paralyzed the implementation of the indigenous electoral provisions. The result is that the Hill District Councils, which are the primary institutional vehicle for the Accord's devolution provisions, continue to be led by bodies with membership that does not reflect the Accord's intended structure, and the question of the councils' legitimacy is consequently contested.

The CHT's indigenous communities faced continuing violence and displacement in 2024 and 2025, with attacks on Pahari communities by Bengali settlers in September 2024 following the death of a Bengali man, and ongoing concerns about military operations in the region. International Work Group for Indigenous Affairs A second phase of armed conflict emerged from 2022 onward, with the Kuki-Chin National Front (KNF) under Nathan Bom pursuing a separate armed struggle for Kuki-Chin communities in Bandarban and Rangamati, with Bangladeshi security forces continuing counterinsurgency operations under Operation Uttaran through 2025. Wikipedia This second armed insurgency represents the consequence of the failure to implement the 1997 Accord comprehensively: when the constitutional mechanisms of peaceful political engagement fail to deliver on their promises, communities facing existential threats to their land, culture, and survival have historically turned to other means.

At the 24th session of the UN Permanent Forum on Indigenous Issues in April 2025, Bangladesh's government reaffirmed its commitment to implementing the CHT Peace Accord, with the Ministry of CHT Affairs Secretary highlighting land management systems under the CHT Regulation of 1900 and the government's financial support for the region. Dhaka Tribune These diplomatic reaffirmations, while not without significance, cannot substitute for the substantive implementation that the Accord's affected communities have been waiting for since 1997.

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5.5 Constitutional Reform and the CHT: The July Charter's Approach

The Constitutional Reform Commission's January 2025 report and the July National Charter of October 2025 both addressed the CHT question, though with different degrees of specificity and different perspectives on the appropriate constitutional resolution.

The Constitutional Reform Commission took a cautiously progressive approach to the CHT's constitutional status. It recommended the explicit recognition of indigenous peoples in the constitution, which would address the longstanding complaint that Bangladesh's constitutional framework does not acknowledge the existence of ethnic minorities other than by implication. The CRC also recommended constitutional recognition of the CHT's special status, though it declined to use the language of indigenous rights or territorial autonomy that the PCJSS and other indigenous advocacy organizations had sought. The specific recommendation was for a constitutional provision recognizing the "special character" of the CHT and mandating the implementation of the Peace Accord as a constitutional obligation rather than a merely statutory commitment.

The constitutional recognition of indigenous peoples is a significant proposal, but its significance depends entirely on the content given to that recognition. Constitutional recognition that merely acknowledges the existence of ethnic diversity without conferring specific rights or governance entitlements would be primarily symbolic. Constitutional recognition that includes specific protections for indigenous land rights, cultural survival, and governance autonomy would represent a genuine constitutional advance. The July National Charter's endorsement of "all mother languages spoken in Bangladesh" being recognized as state languages alongside Bengali, a provision included in the February 2026 constitutional referendum ballot, Wikipedia represents one dimension of this recognition, but the language question, while important, is only one aspect of the broader constitutional challenge of accommodating indigenous diversity within the Bangladeshi constitutional framework.

The most constitutionally significant reform that the CHT's situation demands, and that the current reform process has not fully addressed, is the explicit constitutional authorization of asymmetric governance arrangements that give specific regions and communities governance powers and institutional protections different from those applicable to the rest of the country. This is not a novel constitutional device: Spain's "communities of autonomy," India's Article 371 special provisions for specific states, and Italy's five "regions of special status" all represent constitutional mechanisms for accommodating territorial diversity within unitary or federal frameworks. Bangladesh's constitutional reform could draw on these comparative models to create a CHT-specific constitutional framework that gives the Peace Accord's governance structures an explicit and protected constitutional status, addressing the implementation crisis that has resulted from the Accord's uncertain constitutional foundation.

5.6 International Law, Indigenous Rights, and Bangladesh's Constitutional Obligations

The constitutional analysis of the CHT question cannot be complete without reference to Bangladesh's international legal obligations in relation to indigenous peoples, because those

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obligations provide both normative standards against which Bangladesh's constitutional framework must be evaluated and practical constraints on the reform options available.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, is the most comprehensive international instrument addressing indigenous peoples' rights. Bangladesh voted in favor of UNDRIP, meaning that the Bangladeshi government has formally endorsed the principles it embodies, even though UNDRIP is a declaration rather than a treaty and therefore does not create binding legal obligations in the same manner as a ratified treaty. UNDRIP recognizes indigenous peoples' rights to self-determination, to maintain and develop their cultural identities and traditional institutions, to maintain and protect their lands, territories, and resources, to their own justice systems and governance institutions, and to free, prior, and informed consent in relation to decisions that affect their rights and territories.

International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples, which is a binding treaty, has not been ratified by Bangladesh, and the government has consistently resisted ratification on the grounds that its provisions would be inconsistent with the constitution's unitary framework and the principle of equal citizenship. This argument is mistaken as a matter of international law (ILO 169 applies to all its ratifying states regardless of their constitutional structure) and unpersuasive as a matter of constitutional theory (as the comparative examples discussed above demonstrate, unitary states can create special governance arrangements for indigenous communities without abandoning the constitutional commitment to equal citizenship). The question of ILO 169 ratification is one that the current constitutional reform process should address directly.

The International Covenant on Civil and Political Rights, which Bangladesh has ratified, contains in Article 27 a provision protecting the rights of ethnic, religious, and linguistic minorities to enjoy their own culture, practice their own religion, and use their own language. The Human Rights Committee's interpretation of Article 27, in both its General Comment 23 and its decisions on individual communications, has extended this protection to indigenous peoples and has interpreted it as imposing positive obligations on states to protect indigenous communities' land rights and traditional ways of life, not merely negative obligations to refrain from direct interference. Bangladesh's compliance with Article 27 in relation to the CHT's indigenous communities is, given the documented record of land dispossession, demographic displacement, and cultural assimilation pressure, deeply questionable.

CHAPTER SIX: THE FEDERAL QUESTION IN BANGLADESH: ASPIRATIONS, ARGUMENTS, AND ALTERNATIVES

6.1 Why Federalism Has Never Been Seriously Considered in Bangladesh

The question of whether Bangladesh should adopt a federal constitutional structure, distributing sovereign authority between a national government and autonomous subnational units, has been a persistent if largely underground current in Bangladeshi constitutional debates without ever

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achieving serious political traction. Understanding why this is so, and whether the constitutional circumstances of 2024 to 2026 have changed the conditions for this debate, is important both for understanding Bangladesh's constitutional history and for assessing the reform options available in the current moment.

The historical case against federalism in Bangladesh rests on several foundations. The most powerful is the experience of Pakistani federalism itself. The constitutional structure that governed undivided Pakistan was formally federal, with a national government and two provinces (West and East Pakistan, later joined by additional West Pakistan units). But Pakistani federalism failed comprehensively to protect the interests of East Bengal, which was systematically exploited economically, politically, and culturally by the West Pakistani-dominated central government. The experience of Pakistani federalism did not, for Bangladesh's founders, demonstrate the virtue of distributed sovereignty as a protection against tyranny. It demonstrated instead how federal structures could be manipulated to perpetuate the dominance of one region over another, and how provincial autonomy in a context of regional power imbalance was more likely to be used for exploitation than for self-governance.

The emotional resonance of this Pakistani federal experience for Bangladesh's founding generation cannot be overstated. The liberation war itself was in significant part a war against a perverted federalism in which formal provincial autonomy was used to extract resources from East Bengal while denying its people political power proportionate to their numerical majority. When the 1972 constitution's drafters chose a unitary structure, they were making a political and psychological statement as much as a structural choice: Bangladesh would not repeat the Pakistani mistake of organizing governance around provincial/national divisions that could be exploited for regional exploitation.

A second historical argument against federalism in Bangladesh is geographic and demographic. Bangladesh is an extraordinarily densely populated, geographically compact, and ethnically homogeneous country (with the important exception of the CHT and the plains minorities). The classic justifications for federalism, managing the governance of a large territory with diverse regional identities, managing the relationship between distinct ethnic or cultural communities, and providing a constitutional mechanism for the integration of previously separate political units, do not apply with the same force to Bangladesh as they do to countries like India, Nigeria, or Brazil. A unitary state with genuine local self-governance, organized along the lines contemplated by Articles 59 and 60, could in principle deliver the decentralization benefits that federalism provides in larger and more diverse states without the institutional complexity and coordination costs that full federalism entails.

A third argument against federalism is the practical one of institutional capacity. Federal governance requires strong administrative institutions at both levels of government, effective mechanisms of intergovernmental coordination, and an independent judiciary capable of resolving constitutional disputes between levels of government. Bangladesh lacks these institutional prerequisites in their current state: the local government institutions that would serve as the subnational governments in a federal arrangement are precisely the ones that have been most thoroughly hollowed out by decades of centralization. Creating federal subnational

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governments from scratch, while simultaneously reforming national institutions, would represent an institutional challenge of staggering complexity.

6.2 The Case for Federal or Quasi-Federal Reform: Reconsidering the Question

Despite these powerful historical and practical arguments against federalism, there is a genuine intellectual case for reconsidering the federal question in the light of Bangladesh's constitutional experience and comparative evidence. This case rests not on the desirability of full-scale classical federalism but on the potential value of structural reforms that give subnational units constitutional protection of their autonomy in ways that the current unitary framework does not provide.

The central argument for some form of constitutionally protected subnational autonomy derives precisely from the analysis of centralization's failure that has been developed in the preceding chapters. The unitary framework has demonstrably failed to prevent the concentration of power in a manner that has repeatedly enabled authoritarian governance. The constitutional provisions for local government have been rendered nominal by political practice, not because the constitution is unclear but because the political incentives to maintain centralization are stronger than the constitutional commitment to decentralization. If constitutional provisions alone are insufficient to protect local autonomy in a unitary framework, the logical alternative is to give subnational authority a different and stronger constitutional foundation, one that makes it genuinely resistant to central encroachment.

The comparative literature on federalism suggests that the federal principle can be applied in a variety of ways that do not require the creation of state-level governments with the institutional weight of Indian states or American states. The German Bundesrat model, in which states participate directly in national legislation through a second chamber composed of state government representatives, could be adapted for Bangladesh in a form in which regional councils or local government representatives participate in a reformed upper house of a bicameral parliament. This would give subnational interests a voice in national decision-making without creating the full panoply of state-level governmental institutions.

The Spanish model of asymmetric autonomy communities, each with its own statute of autonomy negotiated with the national government and encoding its specific governance arrangements, could be adapted to address the CHT's constitutional situation. A specific autonomy statute for the CHT, constitutionally entrenched and constitutionally protected against unilateral modification by the national government, would give the Peace Accord's governance structures the constitutional basis they currently lack, while maintaining the formal unitary character of the constitution through a specific constitutional authorization of asymmetric governance.

The concept of "administrative decentralization with constitutional protection," sometimes called "devolution with teeth," represents a middle path between full federalism and the current inadequately protected unitary framework. Under this model, the national constitution would explicitly enumerate the functions, fiscal powers, and institutional protections of subnational governments, creating a constitutional right of local autonomy that courts could enforce against

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central government encroachment. The difference from the current Articles 59 and 60 would be substantive: instead of leaving the content of local government to legislative definition, the constitution would itself specify the minimum functional, fiscal, and institutional content of local self-governance, making it constitutionally impermissible for Parliament to reduce local governments below that minimum threshold.

6.3 The July Charter's Approach to Bicameralism and Its Implications for Decentralization

The February 2026 constitutional referendum included provisions for the introduction of a bicameral parliament, with a 100-member Upper House to be formed based on the proportion of votes received by political parties in the national election. Wikipedia This bicameral proposal, endorsed by the July National Charter and approved in the referendum, is directly relevant to the question of decentralization, because the design of the Upper House will determine whether it serves as a genuine mechanism for subnational representation in national governance or merely as an additional layer of national political competition.

The Constitutional Reform Commission's proposal to restructure Bangladesh's legislature drew inspiration from Steffen Ganghof's model of semi-parliamentary government, which advocates for a dual-chamber system where two independently elected bodies share legislative power, aiming to balance democratic responsiveness with stability. Verfassungsblog However, the specific design of the proposed Upper House, in which members are not directly elected but allocated proportionally based on votes cast in the Lower House election, departs significantly from the comparative models in which upper chambers serve as vehicles for territorial representation rather than merely as proportional mirrors of national partisan competition.

A constitutionally more robust design for Bangladesh's Upper House from the perspective of decentralization would give subnational governments or local government representatives a direct role in its composition, following the German Bundesrat model. If Upper House members were appointed by or elected from subnational governance bodies rather than allocated based on national party vote shares, the Upper House would serve as a genuine mechanism for representing subnational interests in national legislation, giving local governments a constitutional voice in the decisions that affect them. This design would not require the creation of state-level governments on the German or Indian model, because the "subnational" units whose representatives would compose the Upper House could be the Division or District level units of Bangladesh's existing administrative structure.

The constitutional amendment process required under the July Charter provides an opportunity to reconsider the Upper House design along these lines. The Charter provides that newly elected members of Parliament would serve as a Constitution Reform Assembly to adopt amendments to the Constitution within 180 days, ConstitutionNet creating a specific window for constitutional redesign that could include a more decentralization-focused Upper House composition. Whether the BNP government, which secured a two-thirds supermajority in the February 2026 elections, will use this constitutional moment to advance genuine decentralization or merely to entrench its own governing advantages is one of the most important questions facing Bangladesh's constitutional development.

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CHAPTER SEVEN: THE CONSTITUTIONAL REFORM COMMISSION AND THE JULY CHARTER: LOCAL GOVERNMENT IN THE REFORM AGENDA

7.1 The Constitutional Reform Commission's Recommendations on Local Government

The Constitutional Reform Commission (CRC) submitted its report to the interim government in January 2025, having conducted an extensive consultation process that included public hearings, submissions from political parties and civil society organizations, and expert consultation. The CRC's recommendations focused on seven main objectives, including decentralizing state power and empowering local governments adequately, identifying this as one of the core imperatives of the reform agenda. Bangladesh Sangbad Sangstha The specific recommendations on local government, which represent the most comprehensive official proposal for local governance reform since the 1997 CHT Peace Accord, deserve detailed examination.

The CRC recommended strengthening the constitutional provisions on local government by amending Articles 59 and 60 to make their content more specific and more resistant to legislative reduction. The proposed amendments would specify the minimum functional and fiscal content of local self-governance, moving from the current framework in which Parliament has broad discretion over the content of local government powers to one in which the constitution itself defines the essential elements of local autonomy. This approach directly addresses the hollowing-out problem identified above, by creating a constitutional floor below which Parliament cannot reduce local government authority.

The CRC also recommended the creation of a three-tier local government system with constitutionally specified functions at each tier: the Union/Ward level (covering individual villages and urban wards), the Upazila level (covering subdistricts), and the Zila (District) level. For each tier, the recommended amendments would specify categories of functions that must be assigned to that tier and that the central government cannot reclaim, including primary health care, basic education administration, local infrastructure, agriculture extension, social welfare, and environmental management at appropriate levels. This functional specificity represents a significant constitutional advance over the current framework, which assigns functions to local governments through legislation that Parliament can modify or repeal at will.

On the fiscal front, the CRC's recommendations called for a constitutionally mandated minimum percentage of the national government's revenue to be transferred to local governments, similar to the fiscal transfer requirements found in the Philippines' Local Government Code and in India's Finance Commission framework. A constitutional minimum transfer requirement would address the most fundamental fiscal dependency problem by guaranteeing local governments a reliable and constitutionally protected revenue stream that cannot be reduced below the mandated minimum by annual budget decisions. The specific percentage recommended by the CRC was not publicly disclosed in the available summaries, but the principle of a constitutionally mandated fiscal transfer is constitutionally sound and practically important.

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A roundtable discussion organized by UNDP and Prothom Alo in November 2024 identified eight key recommendations for local government reform, including fostering financial independence through innovative revenue mechanisms, clear separation of roles between locally elected representatives and Members of Parliament, and leveraging technology for governance through digitalization. United Nations Development Programme These recommendations align closely with the CRC's approach and reflect a broader consensus among governance practitioners about the structural requirements for genuine local government empowerment.

The CRC's recommendations on the relationship between elected local bodies and the bureaucracy addressed what this textbook has identified as the most fundamental structural obstacle to effective local governance in Bangladesh: the dual governance problem of parallel elected and bureaucratic authority with unclear lines of accountability. The CRC recommended that the UNO at the Upazila level and corresponding officials at other levels be made formally accountable to elected local bodies rather than exclusively to central ministry hierarchies, changing the fundamental accountability relationship of local administration. This recommendation, if implemented, would represent the most significant shift in the structural dynamics of local governance since independence, because it would eliminate the dual governance arrangement that has historically rendered elected local bodies powerless over the administration that nominally serves them.

7.2 The July National Charter: Local Government in the Consensus Framework

The July National Charter, signed by 25 political parties on 17 October 2025, contains 84 reform recommendations including 48 constitutional amendments addressing, among other matters, decentralization. Journal of Democracy The Charter's specific provisions on local government represent the negotiated outcome of the National Consensus Commission's extensive consultative process, and they reflect both the areas of genuine consensus among political parties and the areas where significant differences of view remain.

The Charter's most important local government provision is the consensus on "strengthening of local government" as one of the 30 reform proposals on which political parties reached agreement and that will be constitutionally binding on the parties that won the February 2026 election. This commitment is specifically listed among the consensus reforms that voters were asked to approve in the February 2026 referendum. Wikipedia The specific content of the "strengthening" commitment, however, is less clearly specified than the CRC's recommendations, reflecting the political difficulty of reaching consensus among parties with divergent views on how much local autonomy would be constitutionally appropriate.

The Charter's endorsement of bicameralism, with an Upper House, has important implications for local government, though these implications were not explicitly developed in the Charter's text. As discussed above, the design of the Upper House will determine whether it serves as a vehicle for subnational representation or merely as an additional dimension of national partisan competition. The Charter's proposal for Upper House composition based on national party vote shares, rather than subnational representation, suggests that the primary rationale for bicameralism in the July Charter framework is the proportionality principle at the national level rather than the decentralization principle at the subnational level. This design choice represents a

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missed opportunity to use the bicameral reform as a vehicle for genuine structural decentralization.

The Charter's commitment to recognizing all of Bangladesh's languages, including indigenous languages alongside Bengali, represents a significant step toward acknowledging the country's ethnic and cultural diversity. The referendum ballot included the provision that "all mother languages spoken in Bangladesh will be recognized as state languages, alongside Bengali." Wikipedia This linguistic recognition has direct implications for local governance in the CHT and other areas of indigenous habitation, because it legitimizes the use of indigenous languages in local governance and provides a constitutional basis for indigenous-medium education and other cultural support programs. However, linguistic recognition alone does not address the substantive governance questions of land rights, territorial autonomy, and implementation of the Peace Accord that are the most urgent constitutional challenges in the CHT.

7.3 The Local Government Reform Commission: A Parallel Track

Alongside the Constitutional Reform Commission, the interim government established a Local Government Reform Commission under the chairmanship of Tofail Ahmed, a recognized expert in local governance. The Local Government Reform Commission operated as a parallel institutional track for local government reform, focusing on the legislative and institutional dimensions of local governance that fall within the domain of ordinary law rather than constitutional amendment.

Tofail Ahmed, chairing a UNDP-organized roundtable in November 2024, highlighted the urgency of decentralization and emphasized that it is not merely a policy buzzword but an urgent necessity to address Bangladesh's unique socio-economic challenges. United Nations Development Programme The Local Government Reform Commission's work has been less publicly visible than the Constitutional Reform Commission's, but its recommendations on the specific legislative framework for local governance, including the revision of the Union Parishad Acts, the Upazila Parishad Act, the Zila Parishad Act, and the City Corporation and Pourashava Acts, are essential complements to the constitutional reform.

The relationship between the two commissions' work raises an important question of sequencing and constitutional design: to what extent should the constitutional reform pre-determine the specific institutional arrangements of local governance, and to what extent should it leave those arrangements to be specified through legislation? The argument for constitutional specificity, as developed in this chapter, is that constitutional provisions provide stronger and more durable protection for local autonomy than legislative provisions, which a future parliamentary majority can modify or repeal. The argument against excessive constitutional specificity is that constitutions should establish principles and frameworks rather than operational details, and that the specific institutional arrangements of local governance should retain flexibility to be adapted as experience and changing circumstances require.

The resolution of this tension in the specific case of Bangladesh's local government reform favors a constitutional framework that establishes specific principles and minimum standards, including the functional, fiscal, and institutional floors below which Parliament cannot reduce

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local government, while leaving the specific institutional arrangements within those floors to be determined through legislation subject to constitutional review. This framework would give local government autonomy the constitutional protection it needs to resist political erosion while maintaining the legislative flexibility needed for adaptive governance.

CHAPTER EIGHT: REFORM PROPOSALS: TOWARD A CONSTITUTIONALLY ROBUST FRAMEWORK FOR LOCAL GOVERNANCE AND DECENTRALIZATION IN BANGLADESH

8.1 Constitutional Amendments for Genuine Local Government Empowerment

The analysis conducted in the preceding seven chapters of this part, drawing on theoretical foundations, textual jurisprudence, historical investigation, structural diagnosis, comparative analysis, and the examination of the current reform agenda, enables the advancement of a comprehensive set of constitutional reform proposals that could genuinely transform Bangladesh's approach to local governance and decentralization.

The first and most fundamental constitutional reform is the amendment of Article 59 to specify the minimum content of constitutional local government autonomy, converting what is currently a framework provision leaving all specifics to legislative determination into a substantive constitutional guarantee of meaningful local self-governance. The amended Article 59 should specify: that local government bodies at all three constitutional tiers, Union/Ward, Upazila, and Zila, shall have exclusive authority over a specified list of functions that the national government and Parliament cannot reclaim or exercise without the concurrence of the relevant local body; that local government elections shall be held at intervals of not more than five years and shall be administered by an independent commission equivalent in status to the Election Commission for national elections; that elected local government bodies shall have authority over the local administration within their jurisdiction, with local administrative officials being accountable to the elected body rather than exclusively to national ministry hierarchies; and that no elected local government body shall be dissolved by executive action except through a constitutionally specified process requiring judicial oversight and immediate provision for elections.

The second essential constitutional reform is the amendment of Article 60 to include specific fiscal guarantee provisions that go beyond the current general language about the conferral of taxing and budgeting powers. The amended Article 60 should specify: that a constitutionally mandated minimum proportion (to be specified in the amendment, on the basis of the CRC's recommendation) of total national revenue shall be allocated to local governments through a formula determined by an independent National Finance Commission; that local governments shall have the constitutional authority to levy specified categories of taxes whose proceeds shall be entirely retained by and managed by the local body, free from central government interference; that the National Finance Commission shall be constitutionally established as an independent body with the mandate to recommend fair and transparent principles for fiscal transfers between national and local governments, with its recommendations being binding unless rejected by a two-thirds majority of both houses of Parliament; and that no central

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government transfer to a local government shall be conditioned on the exercise of political discretion, with all transfers being made on the basis of transparent formula-based criteria.

The third essential constitutional reform is the creation of a specific constitutional provision guaranteeing the right of local government bodies to participate in national legislative processes that affect their authority, functions, or fiscal resources. This provision, which would effectively create a limited form of constitutional federalism even within the unitary framework, would specify that legislation affecting the authority, functions, or fiscal resources of local government requires not merely a parliamentary majority but also the formal consultation of a representative body of local government and the formal consideration of local government's response in the legislative process. Where legislation would reduce the constitutional minimum content of local government autonomy, it should require a supermajority, with two-thirds majority in both chambers, for adoption.

The fourth essential constitutional reform is the explicit constitutional recognition of the special governance status of the Chittagong Hill Tracts. The amended constitution should include a specific provision, styled after the asymmetric autonomy provisions in Spanish, Italian, or Finnish constitutions, recognizing the CHT as a "region of special governance status" with constitutionally protected rights to indigenous governance institutions, indigenous land rights, indigenous cultural and linguistic preservation, and the implementation of the 1997 Peace Accord as a constitutional obligation. This constitutional recognition should be accompanied by the establishment of a constitutionally mandated CHT Special Committee of Parliament, composed of both indigenous and non-indigenous representatives, with the specific mandate of overseeing the implementation of the Peace Accord and reviewing legislation affecting the CHT.

The fifth essential constitutional reform concerns the explicit recognition of indigenous peoples in the constitution. The current constitution's silence on the existence of ethnic minorities other than by implication is constitutionally anomalous in a country with over fifty distinct indigenous peoples and numerous other ethnic minority communities. The amended constitution should include a provision, in the chapter on fundamental rights, recognizing the right of every citizen to maintain and develop their cultural identity, language, and traditions, and specifically recognizing the rights of indigenous peoples to their customary governance institutions, traditional lands and territories, and cultural heritage. This provision should be explicitly designated as a fundamental right enforceable through constitutional litigation, giving indigenous communities a direct constitutional remedy against state actions that threaten their cultural survival or territorial integrity.

8.2 Legislative Reforms to Complement Constitutional Change

Constitutional reform is necessary but not sufficient for genuine local government transformation in Bangladesh. The constitutional amendments proposed above require complementary legislative reforms that translate constitutional principles into operational institutional realities. The most important legislative reforms can be grouped in three categories: fiscal reform, functional reform, and administrative reform.

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The fiscal reform package should include the enactment of a Local Government Finance Act that establishes the formula-based transfer system contemplated in the amended Article 60, specifies the categories of local government taxes with their rates and administration, creates the National Finance Commission as an independent statutory body, and establishes the financial reporting and audit requirements that ensure transparency and accountability in local government finance. The Local Government Finance Act should draw on the comparative experience of countries that have successfully implemented fiscal decentralization, including the Philippines (whose Local Government Code of 1991 mandated specific internal revenue allotments to local governments), South Africa (whose Constitution provides for an equitable share of nationally collected revenue for municipalities), and Brazil (whose constitution mandates constitutionally guaranteed fiscal transfers to municipalities).

The functional reform package should include comprehensive revision of all major local government Acts, replacing the current framework in which functions are assigned at ministerial discretion with a framework in which the specific functions assigned to each tier of local government are specified in legislation and cannot be reclaimed by central government without constitutional amendment. The revised Acts should also address the specific mechanism through which elected local bodies exercise oversight of local administration, specifying the accountability relationship between elected bodies and local administrative officials in a manner that resolves the dual governance problem identified in Chapter 4.

The administrative reform package should include amendment of the Bangladesh Civil Service rules to create a category of civil servants whose primary accountability is to local government bodies rather than to central ministry hierarchies. The creation of a Local Government Service, distinct from the current Bangladesh Administrative Service but coordinated with it, would provide local governments with the administrative capacity they need to perform their expanded functions while resolving the accountability ambiguity that currently allows UNOs and other local administrators to treat elected bodies as advisers rather than principals. A Local Government Service would also create a career track for civil servants who specialize in local governance, building institutional expertise and continuity in this domain.

8.3 Institutional Reforms for Local Democratic Participation

Beyond constitutional and legislative changes, genuine local government empowerment in Bangladesh requires institutional reforms that address the cultural and procedural conditions for meaningful democratic participation at the local level. These institutional reforms are not substitutes for constitutional and legislative change but are necessary complements to it.

The most important institutional reform is the creation of robust ward-level participatory mechanisms below the elected local government bodies themselves. The constitutional mandate of Article 59 establishes elected bodies as the vehicle of local governance, but the elected bodies are still relatively remote from the everyday lives of most citizens, particularly in rural areas where a single Union Parishad may represent tens of thousands of people. Ward committees and village-level citizen forums, established on a constitutional and legislative basis rather than as informal administrative arrangements, would create a genuine structure of participatory

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democracy from the bottom up, ensuring that the elected local body is genuinely connected to and accountable to the communities it represents.

The use of participatory budgeting, which requires local governments to involve citizens directly in budget allocation decisions through structured deliberative processes, has been shown in Brazil, India, and elsewhere to significantly increase the quality and equity of local spending decisions and to strengthen citizens' sense of ownership and accountability for local governance outcomes. The constitutional and legislative framework for local government reform should specifically mandate participatory budgeting processes at the Union Parishad and Ward levels, with specific requirements for the inclusion of women, youth, and marginalized community members in the deliberative processes.

The digital governance dimension of local government reform has received increasing attention in the reform debates following the July 2024 uprising, and it deserves serious constitutional and policy consideration. Bangladesh has achieved remarkable expansion in digital infrastructure and mobile connectivity over the past decade, and these digital platforms offer significant opportunities for enhancing local government transparency, accountability, and citizen engagement. However, digital governance is not a substitute for democratic governance: digital transparency mechanisms that enable citizens to track local government spending and performance are valuable tools, but they are only effective if citizens have the political power to act on the information they receive, which requires the genuine local autonomy that the constitutional and legislative reforms discussed above are designed to create.

The gender transformation of local governance requires institutional reforms that go beyond the reserved seat system to address the structural conditions that prevent women from exercising meaningful political leadership in local government. These include specific training and capacity building programs for women elected to local bodies, protection mechanisms against harassment and intimidation, constitutional requirements that local governments maintain gender-responsive budgeting processes, and the establishment of specific standing committees of local bodies, chaired by women members, with authority over matters of particular concern to women including maternal and child health, domestic violence prevention, and women's economic empowerment.

CONCLUDING REFLECTIONS TO PART EIGHT

The analysis conducted in this part has traced a fifty-year story of constitutional promise and political failure in the domain of local government and decentralization in Bangladesh, a story that has played out against the backdrop of deeper constitutional questions about the nature of Bangladeshi national identity, the relationship between the Bengali majority and the country's indigenous and ethnic minority communities, and the fundamental tension between the unitary constitutional model and the aspirations of communities that experience the costs of centralized governance most acutely.

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What emerges from this analysis is not pessimism about the possibility of genuine decentralization but a clear-eyed understanding of the conditions under which that possibility can be realized. The constitutional reform agenda of 2024 to 2026, represented by the CRC's recommendations and the July National Charter's consensus provisions, has identified the right questions and proposed, in many cases, the right answers. The strengthening of constitutional protections for local government autonomy, the mandating of fiscal transfers, the reform of the accountability relationship between elected bodies and local administration, and the recognition of indigenous rights in the CHT all represent constitutionally sound and politically important advances.

But the history of Bangladesh's engagement with local government reform counsels caution about the distance between constitutional and legislative reform and genuine transformative change. The political economy of centralization has survived every previous reform attempt, not because the reforms were inadequately designed in formal terms but because the political actors who were responsible for implementing them had no genuine interest in doing so. The BNP government elected in February 2026 faces the same political economy that every previous government has faced: a centralized patronage system that is deeply embedded in the governing structures of both major parties, a civil service whose institutional interests are served by centralization, and local governance institutions that have been so thoroughly hollowed out over fifty years that rebuilding them requires not just constitutional amendment but a sustained and politically costly program of institutional development.

The most important insight from the theoretical framework developed in Chapter One is the one drawn from Tocqueville: genuine democratic governance is not merely a set of constitutional provisions and institutional arrangements but a set of practiced habits and cultural dispositions that must be cultivated through experience. Bangladesh's constitutional framework has always contained the provisions for genuine local self-governance. What has been absent is the political commitment to allow those provisions to be experienced, practiced, and internalized by citizens and political actors alike. The question for the post-reform period is not merely whether the constitutional text will be improved, which it will, but whether the political culture of centralization can be sufficiently disrupted to allow the seeds of genuine local democracy to take root and grow.

The Chittagong Hill Tracts situation poses an even more urgent constitutional challenge, because the failure there is not merely one of democratic deficit but of constitutional injustice. The indigenous communities of the CHT have been subjected to demographic displacement, land dispossession, cultural assimilation pressure, and military occupation that no constitutional framework committed to equal dignity and substantive equality can justify. The 1997 Peace Accord represented a genuine constitutional moment of recognition and reconciliation, but its twenty-seven years of non-implementation have undermined the constitutional legitimacy of the settlement it was supposed to create. As one community leader from Rangamati described the Peace Accord: "It was a beacon of hope. It promised to address land rights, reduce the military presence, and recognize our cultural identity. But for many here, those promises feel empty." Peace News Network

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Making those promises real, not as an act of political charity from a majority to minorities, but as a constitutional obligation flowing from the basic commitments to equal dignity and non-domination that the constitution embodies, is the most morally urgent dimension of Bangladesh's constitutional reform agenda. The constitutional recognition of indigenous peoples, the constitutional entrenchment of the CHT's special governance status, the constitutional mandate for Peace Accord implementation, and the constitutional protection of indigenous land rights and cultural survival are not optional enhancements to an otherwise adequate constitutional framework. They are constitutional necessities for a republic that takes seriously its own foundational commitments.

The federal question, while not currently within the political horizon of Bangladesh's constitutional reform, deserves sustained intellectual attention in the reform moment, because the structural problems of centralization that this part has documented will not be permanently resolved by constitutional amendments that, however well-designed, leave the fundamental unitary character of the state intact. The experience of fifty years of constitutional failure in local governance, despite the clear mandate of Articles 59 and 60, suggests that the resistance of the political system to genuine decentralization is structural rather than incidental, and that overcoming it may ultimately require more fundamental constitutional restructuring than the current reform agenda contemplates. The constitutional moment of 2024 to 2026 does not require the adoption of federalism, but it does require constitutional reformers to take seriously the possibility that a unitary state with genuinely protected subnational autonomy, enforced by a constitutional court with the will and capacity to hold the centre accountable to its decentralization commitments, may require constitutional mechanisms closer to the federal end of the governance spectrum than Bangladesh's tradition has previously been willing to consider.

The intellectual tradition most relevant to Bangladesh's local governance challenge is the one that insists on the connection between political structure and democratic culture: the insight shared by Tocqueville, Arendt, Mill, and the republican tradition more broadly that self-governance is not merely an institutional arrangement but a form of political life that must be practiced and habituated if it is to be real. Bangladesh's constitutional reform must create not merely the formal structures of local self-governance but the institutional conditions within which democratic local governance can be practiced, experienced, and internalized as the normal way of organizing political life from the grassroots to the centre. When that connection between constitutional structure and democratic practice is finally made, the promise of Articles 59 and 60, unrealized for more than fifty years, may begin to be fulfilled.

FURTHER READING AND KEY SOURCES FOR PART EIGHT

On the philosophy and theory of decentralization and local government, students should consult Tocqueville, Alexis de, Democracy in America (1835 and 1840; Penguin Classics edition 2003); Mill, John Stuart, Considerations on Representative Government (1861; Oxford World Classics edition 2008); Arendt, Hannah, On Revolution (1963; Penguin Classics edition 2006); Oates, Wallace, Fiscal Federalism (1972); Ostrom, Elinor, Governing the Commons: The Evolution of Institutions for Collective Action (1990); and Elazar, Daniel, Exploring Federalism (1987).

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On subsidiarity theory and the philosophical foundations of local governance, students should consult Pope Pius XI, Quadragesimo Anno (1931); Follesdal, Andreas, Subsidiarity as a Political Norm, Political Studies (1998); and Carozza, Paolo, Subsidiarity as a Structural Principle of International Human Rights Law, American Journal of International Law (2003).

On comparative federalism and constitutional models of decentralization, students should consult Wheare, Kenneth, Federal Government (4th edition, 1963); Watts, Ronald, Comparing Federal Systems (3rd edition, 2008); Banting, Keith and Simeon, Richard (eds), Redesigning the State: The Politics of Constitutional Change (1985); and the comparative analyses in Halberstam, Daniel and Reimann, Mathias (eds), Federalism and Legal Unification (2012).

On fiscal federalism and local government finance, students should consult Musgrave, Richard, The Theory of Public Finance (1959); Bird, Richard and Vaillancourt, Francois (eds), Fiscal Decentralization in Developing Countries (1998); Bahl, Roy and Linn, Johannes, Urban Public Finance in Developing Countries (1992); and the World Bank's World Development Report 1999/2000: Entering the 21st Century, which includes extensive analysis of decentralization.

On local government in Bangladesh specifically, students should consult Ahmed, Tofail, Decentralization and the Local State: Political Economy and Rural Society in Bangladesh (2008); Siddiqui, Kamal (ed), Local Government in Bangladesh (5th edition, 2005); Khan, Mohammad Mohabbat, Political and Administrative Corruption: Concepts, Comparative Experiences and Bangladesh Case (2016); and Panday, Pranab Kumar, Local Government in Bangladesh: Towards an Understanding of Its Activities and Performances (2011).

On the Chittagong Hill Tracts Peace Accord and its constitutional dimensions, students should consult Mohsin, Amena, The Politics of Nationalism: The Case of the Chittagong Hill Tracts Bangladesh (1997); Adnan, Shapan, Migration, Land Alienation and Ethnic Conflict: Causes of Poverty in the Chittagong Hill Tracts of Bangladesh (2004); Chakma, Bhumitra, Political Conflict and Peace Processes in South Asia: On the Edge of a Precipice? (2013); and Mostakim Bin Motaher and Md. Farhan Intisher Khaled, The Chittagong Hill Tracts: An Account of the Region's Development and Review of the Implementation Status of the 1997 Peace Accord, NDC E-Journal (December 2024).

On indigenous rights in international law and their application to Bangladesh, students should consult Anaya, James, Indigenous Peoples in International Law (2nd edition, 2004); the United Nations Declaration on the Rights of Indigenous Peoples (2007) and its travaux preparatoires; the Human Rights Committee's General Comment 23 on Article 27 of the ICCPR; and the reports of the UN Special Rapporteur on the Rights of Indigenous Peoples with specific reference to Bangladesh.

On the 2024 to 2026 constitutional reform process and its local governance dimensions, students should consult the Constitutional Reform Commission's January 2025 Report; the July National Charter of October 2025; Haque, Muhammad Ekramul and Bisarya, Sumit, July Charter and Constitutional Reforms in Bangladesh, ConstitutionNet, International IDEA (December 2025); Hossain, Sara, Bangladesh's Referendum and Reforms: The Need to Return to a Constitutional Process, ConstitutionNet, International IDEA (March 2026); and the UNDP Bangladesh

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analysis, Decentralization and Empowerment of Local Governments in Bangladesh: A Pathway to Sustainable Development (November 2024).

On democratic backsliding, local governance, and political economy of centralization, students should consult Bardhan, Pranab and Mookherjee, Dilip (eds), Decentralization and Local Governance in Developing Countries: A Comparative Perspective (2006); Blair, Harry, Participation and Accountability at the Periphery: Democratic Local Governance in Six Countries, World Development (2000); and Crook, Richard and Manor, James, Democracy and Decentralisation in South Asia and West Africa: Participation, Accountability and Performance (1998).

On the political economy of federalism and decentralization in South Asia, students should consult Rao, Govinda and Singh, Nirvikar, Political Economy of Federalism in India (2005); Wibbels, Erik, Federalism and the Market: Intergovernmental Conflict and Economic Reform in the Developing World (2005); and the comparative regional analysis in Manor, James, The Political Economy of Democratic Decentralization (1999).

End of Part Eight

Part Nine will examine: The Constitutional Framework of Fundamental Rights in Bangladesh: From the Basic Structure Doctrine and Non-Derogable Guarantees to the New Rights Jurisprudence, Socioeconomic Rights, Environmental Rights, Digital Rights, and the Challenge of Rights Realization in a Post-Authoritarian Constitutional Order.

PART NINE

THE ARCHITECTURE OF CONSTITUTIONAL ACCOUNTABILITY: INDEPENDENT COMMISSIONS, OVERSIGHT INSTITUTIONS, AND THE QUEST FOR CLEAN GOVERNANCE IN BANGLADESH

PREFACE TO PART NINE

There is a question that haunts every serious student of constitutional design, and it is a question that the experience of Bangladesh makes unavoidably urgent: who guards the guardians? The Latin formulation, quis custodiet ipsos custodes, attributed to the Roman poet Juvenal and immortalised in the tradition of Western political thought, captures one of the deepest structural problems of constitutional government. A constitution may create a legislature to make laws, an executive to implement them, and a judiciary to interpret them. It may distribute power carefully among these three branches, install checks and balances, and entrench rights against encroachment. But the machinery of constitutional government, no matter how elaborately

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designed, does not operate automatically. It requires human beings to staff it, and human beings are susceptible to the temptations of power, self-interest, and partisan loyalty. The very officials entrusted with operating the constitutional system can subvert it from within. The very institutions created to guarantee accountability can themselves become instruments of the very pathologies they were designed to cure.

This is not a hypothetical problem. It is the lived experience of Bangladesh across five decades of constitutional government. The Anti-Corruption Commission, created by law to investigate and prosecute corruption, became under the Awami League government a weapon deployed selectively against political opponents while the corruption of government officials was permitted or encouraged. The Election Commission, entrusted with the sacred duty of conducting free and fair elections, presided over some of the most fraudulent electoral exercises in the country's history. The Human Rights Commission, nominally empowered to protect the fundamental rights guaranteed by the constitution, was starved of resources and denied independence, and functioned largely as a legitimating facade for a government that routinely violated the rights it was supposed to protect. The Public Service Commission, designed to insulate civil service appointments from political interference, failed to prevent the wholesale politicisation of the bureaucracy. The Comptroller and Auditor General, responsible for financial accountability, could audit and report but could not enforce; its findings gathered dust in parliamentary committees that met rarely and debated ineffectually.

The problem is not simply one of institutional failure. It is a problem of constitutional design. Bangladesh's constitution, as originally enacted and as amended over the decades, gave these accountability institutions insufficient constitutional grounding. They were creatures of ordinary legislation, vulnerable to repeal, modification, or hollowing out by any government with a parliamentary majority. Their heads and members were appointed by the executive, without meaningful independent scrutiny. Their mandates were often vague, their powers incomplete, and their resources inadequate. They existed, but they did not function as genuine accountability institutions in any meaningful sense.

The July-August 2024 uprising and the constitutional reform process it set in motion offer, for the first time in Bangladesh's history, a serious opportunity to redesign the architecture of accountability. The Constitutional Reform Commission (CRC) submitted recommendations in January 2025 that included, among their most significant proposals, the constitutional entrenchment of key oversight institutions and the creation of an entirely new institution: the National Constitutional Council (NCC), designed to insulate the appointment processes for constitutional bodies from executive capture. The July Charter of 2025, subsequently endorsed by twenty-four political parties and submitted to a referendum in February 2026, incorporated many of these proposals. The referendum results, with sixty-one percent endorsing the reform package, created a mandate for implementation. But as subsequent events have demonstrated, the gap between constitutional design and constitutional reality remains treacherous, and the BNP government's reluctance to convene the Constitution Reform Council as mandated by the July Charter suggests that the struggle for genuine accountability institutions is far from over.

This part of the textbook examines the architecture of constitutional accountability in Bangladesh in its full depth: theoretical, philosophical, historical, comparative, and critical. It begins with the

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general theory of why independent constitutional institutions are necessary and what conditions they require in order to function. It then examines each of the major accountability institutions in Bangladesh, probing their constitutional foundations, their historical performance, their structural weaknesses, and the reforms proposed in the post-2024 moment. It concludes with a comparative and prescriptive analysis that draws on international constitutional experience to evaluate whether Bangladesh's proposed reforms are adequate to the challenges they face, and what further steps are required for the genuine transformation of the accountability architecture.

The analysis proceeds from a foundational conviction: that the quality of constitutional accountability institutions is not a technical matter of institutional design, important as design is. It is a deeply political and philosophical question about the nature of power, the conditions of democratic self-governance, and the relationship between the state and its citizens. Understanding why Bangladesh's accountability institutions have failed requires understanding not only their structural deficiencies but also the political economy of accountability itself: why those who hold power consistently prefer weak accountability institutions, and what conditions are required to overcome that preference. This understanding is essential not only for evaluating the reforms proposed in the July Charter but for assessing whether the political will exists, and can be sustained, to make those reforms real.

CHAPTER ONE: THE PHILOSOPHY OF CONSTITUTIONAL ACCOUNTABILITY: WHY INDEPENDENT INSTITUTIONS EXIST AND WHAT THEY REQUIRE

1.1 The Problem of Delegation and the Principal-Agent Relationship

The philosophical foundation of accountability institutions begins with a problem that is, at its core, a problem of delegation. In a democracy, the sovereign power belongs to the people. The people cannot, however, govern themselves directly in a modern state. They delegate authority to elected representatives, who in turn delegate specific governmental functions to administrative institutions and officials. This chain of delegation is what makes government possible. But it also creates the central problem that accountability institutions are designed to address: those to whom authority is delegated may use it in ways that diverge from the interests or instructions of those who delegated it.

Political scientists and legal theorists describe this problem using the framework of principal-agent theory, borrowed originally from economics. The principal, in this framework, is the party who delegates authority. The agent is the party who receives it and is supposed to act on the principal's behalf. The problem arises because agents have their own interests, information advantages over principals, and opportunities to act in self-interested ways that are difficult for the principal to detect or correct. In a constitutional democracy, the people are the ultimate principal, elected representatives are their primary agents, and the various officials of the executive, judiciary, and administrative apparatus are sub-agents of the representatives. At every level of this chain, the agent problem recurs.

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The classical liberal response to this problem was the separation of powers and the system of checks and balances. By dividing governmental authority among three branches, each with the power to check the others, the constitutional framers of the liberal tradition hoped to prevent any single agent or group of agents from accumulating power sufficient to pursue their private interests without accountability. Madison's formulation in Federalist No. 51 remains the canonical expression of this logic: ambition must be made to counteract ambition, and the interest of the person must be connected with the constitutional rights of the place. The assumption was that each branch would, by its own institutional interests, police the others.

But the twentieth century taught constitutionalists a lesson that Madison's classical design had not fully anticipated: the three-branch model is insufficient to address all the accountability problems of the modern administrative state. The executive branch, in particular, has expanded enormously in size, complexity, and functional scope since the eighteenth century. The modern state regulates economies, manages currencies, provides social welfare, operates public utilities, conducts foreign policy, maintains security services, and administers an enormous range of programmes and policies that the classical liberal state did not contemplate. This expansion of executive function has created accountability gaps that the legislature and judiciary, however vigilant, are structurally ill-equipped to fill. The legislature cannot supervise every executive decision in real time. The judiciary can only act on matters brought before it, and legal proceedings are costly, slow, and often inaccessible to ordinary citizens.

It is into this gap that the modern independent constitutional institution emerges. The Anti-Corruption Commission, the Human Rights Commission, the Election Commission, the Comptroller and Auditor General, the Ombudsman, and the various other oversight bodies that modern constitutions create are responses to the accountability deficit created by the expansion of the administrative state. They are designed to perform specialised accountability functions that the three traditional branches cannot perform adequately: to investigate corruption without the conflicts of interest that would arise if the government were investigating itself; to monitor elections without the partisan biases that elected officials inevitably carry; to protect human rights even against the government that appoints ordinary judges; to audit public finances with the professional expertise that legislators rarely possess.

1.2 The Four Conditions of Effective Accountability Institutions

The theoretical literature on independent constitutional institutions, substantially enriched by comparative constitutional experience over the past three decades, converges on four conditions that such institutions require in order to function effectively. These conditions are worth stating with precision because they provide the analytical framework against which Bangladesh's accountability institutions will be evaluated throughout this part.

The first condition is independence from the political branches. An accountability institution that is controlled by, or dependent on, the very officials it is supposed to hold accountable cannot perform its function. Independence has several dimensions. Structural independence requires that the institution be constitutionally established in a way that insulates it from ordinary legislative repeal or executive reorganisation. Operational independence requires that its decisions not be subject to executive direction or legislative override. Financial independence requires that its

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budget be protected from executive manipulation that could be used to starve it of resources. And perhaps most importantly, personnel independence requires that its leadership be appointed and removed through processes that are not controlled exclusively by the executive.

The second condition is capacity: the institution must have the financial, technical, and human resources necessary to perform its functions effectively. An anti-corruption commission with an underfunded investigation unit cannot seriously investigate the large-scale corruption of senior officials. A human rights commission without legal expertise cannot effectively process complaints or conduct investigations. An audit institution without access to modern forensic accounting tools cannot detect sophisticated financial crimes. Capacity is not a technical detail; it is a constitutional question because an institution that is formally empowered but substantively incapacitated produces the worst of both worlds: it legitimises the status quo by appearing to provide accountability while actually providing none.

The third condition is mandate clarity. An accountability institution must have a clearly defined mandate that establishes what it can and cannot do, what standards it applies, and what remedies it can impose or recommend. Ambiguity of mandate creates uncertainty about the institution's authority, enables political manipulation of its scope, and makes it difficult to evaluate whether it is performing its functions properly. The mandate must be both broad enough to address the full range of problems the institution is created to address and specific enough to provide clear legal standards for its operations.

The fourth condition is legitimacy, both democratic and professional. An accountability institution must be perceived as legitimate by the public it serves, the officials it oversees, and the broader democratic community. Democratic legitimacy requires that the institution's creation and broad mandate be grounded in democratic authorisation, either through constitutional entrenchment or robust statutory enactment with broad political support. Professional legitimacy requires that its officers be regarded as genuinely qualified and impartial, rather than as political appointees in institutional disguise. Without legitimacy, even a formally well-designed institution will be ignored, resisted, or circumvented.

These four conditions: independence, capacity, mandate clarity, and legitimacy, provide the analytical framework for the examination that follows. In each case, the question will be how Bangladesh's existing institutions measure up against these conditions, what structural reforms would be required to bring them into conformity, and whether the proposals of the Constitutional Reform Commission and the July Charter adequately address the deficiencies identified.

1.3 The Political Economy of Accountability: Why Governments Prefer Weak Watchdogs

There is an asymmetry in the politics of accountability that any analysis of this subject must confront honestly. Strong accountability institutions are in the interest of citizens, who benefit from reduced corruption, more reliable elections, better protection of their rights, and more efficient use of public resources. But strong accountability institutions are generally not in the interest of those who hold governmental power, who benefit from weak oversight in ways that are immediate, concrete, and personal: opportunities for corruption, patronage appointments, electoral manipulation, and the suppression of political opposition.

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This asymmetry creates a systematic political-economy dynamic: those with the power to create strong accountability institutions are precisely those who have the most to lose from having them. Governments create accountability institutions, typically under public pressure or as a condition of international legitimacy, but they design them to appear effective while remaining substantively weak. They staff them with loyalists rather than genuine professionals. They give them broad mandates but inadequate resources. They subject them to subtle forms of political pressure that formal independence provisions are insufficient to counter. And when an accountability institution threatens to become genuinely effective, its leadership is replaced, its budget is cut, or its jurisdiction is narrowed through legislative amendment.

Bangladesh's history of accountability institutions is a textbook illustration of this political-economy dynamic. The Anti-Corruption Commission was created in 2004, ostensibly to strengthen the fight against corruption. In practice, it became an instrument for the selective persecution of political opponents while the corruption of the ruling party was systematically protected. The Human Rights Commission was created in 2009 with an apparently robust mandate, but its budget was kept minimal and its leadership was appointed from among individuals perceived as politically safe. The Election Commission has, at various points in Bangladesh's history, consisted of individuals whose primary qualification appeared to be their loyalty to the government that appointed them.

Understanding this dynamic is essential for evaluating reform proposals. The question is not only whether a proposed accountability institution is well-designed in the abstract, but whether the design is robust enough to survive the inevitable pressure from future governments to capture, weaken, or circumvent it. This requires attention to the depth of constitutional entrenchment, the specificity of independence protections, the sustainability of funding arrangements, and the creation of political incentive structures that reward compliance with accountability norms rather than punishment by them.

The scholarship of Tarunabh Khaitan, particularly his 2021 work on guardian institutions, is useful here. Khaitan argues that the effectiveness of accountability institutions depends not only on their formal design but on what he calls their "anti-cartelisation" function: their capacity to prevent any single political party or coalition from capturing all the major positions of governmental power simultaneously. An accountability institution that is appointed through a process controlled by a single party cannot perform this function. What is needed is a design that requires genuine inter-party consensus in appointments, that protects institutions from removal by a single party, and that creates reputational incentives for officeholders to maintain genuine independence rather than trading on the appearance of it.

This framework is directly relevant to Bangladesh's proposed National Constitutional Council, which we will examine in detail later in this part. The NCC, as proposed by the CRC, is explicitly designed to prevent any single political force from controlling the appointment of all the major accountability institutions. Its success or failure will depend on whether its design is robust enough to resist the inevitable pressure from future governments to modify it in ways that restore executive control.

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1.4 Historical and Comparative Antecedents: The Global Development of the Fourth Branch of Government

The idea of a "fourth branch" of government: a set of independent regulatory and accountability institutions that supplement and correct the three classical branches, has developed over the past century across multiple constitutional traditions, and the comparative experience is instructive for Bangladesh.

The South African model is widely regarded as among the most sophisticated in the developing world. Chapter 9 of the South African Constitution of 1996 established six "state institutions supporting constitutional democracy": the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission. Each institution is established directly in the Constitution, not merely in ordinary legislation. Each is required to be independent and subject only to the Constitution and the law. Their powers and functions are specified in constitutional terms, and additional detail is provided in ordinary legislation passed pursuant to constitutional mandate. Crucially, the institutions are accountable to the National Assembly, which must adopt legislation necessary to ensure the effectiveness of each institution.

The South African model has not been without its difficulties. The Public Protector under Thuli Madonsela became a formidably effective accountability institution during the Zuma years, exposing corruption at the highest levels of government. Under her successor Busisiwe Mkhwebane, the office became embroiled in controversies about its independence and competence, demonstrating that the quality of the individual officeholder matters even within a strong constitutional framework. But the institutional design proved resilient: Mkhwebane was eventually removed from office through the constitutional removal process, and the Constitutional Court consistently upheld the independence of Chapter 9 institutions against executive interference. The South African experience demonstrates that robust constitutional entrenchment, combined with a culture of constitutional legality and an independent judiciary willing to enforce constitutional norms, can make accountability institutions genuinely effective even in a challenging political environment.

The Canadian model offers a different set of lessons. Canada has developed over several decades a comprehensive framework of "Officers of Parliament," including the Auditor General, the Information Commissioner, the Privacy Commissioner, the Commissioner of Official Languages, the Commissioner of Lobbying, the Commissioner of Elections, and others. These officials are appointed through a process that involves the approval of both houses of Parliament, and they report directly to Parliament rather than to the executive. Their independence from the executive is both formal and practical, enforced by parliamentary culture and the accountability norms of Canadian public life. The Canadian model demonstrates that robust accountability institutions can be created through ordinary legislation within a parliamentary system, without the need for specific constitutional entrenchment, provided that the political culture and the parliamentary norms support genuine independence.

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The German model of the Federal Constitutional Court and the Federal Audit Court illustrates a third approach: embedding accountability deeply within the constitutional framework while giving accountability institutions strong institutional resources and high social prestige. The Federal Constitutional Court, with its dual chambers and its system of appointment requiring a two-thirds majority in both the Bundestag and the Bundesrat, enjoys a level of political legitimacy and operational independence that few constitutional courts in the world can match. The Federal Audit Court, with its constitutional grounding and its independence from executive direction, produces rigorous audit reports that are taken seriously by the legislature and the public.

These comparative examples share a common lesson: the effectiveness of accountability institutions depends on a constellation of factors that must be present simultaneously. Constitutional entrenchment provides formal protection. Appointment processes that require broad political consensus prevent capture by a single political force. Adequate resources enable genuine investigation and enforcement. A culture of constitutional legality creates social expectations that institutions will be independent and that their findings will be respected. The absence of any of these elements creates vulnerability. The presence of all of them creates resilience.

Bangladesh, as the subsequent chapters demonstrate, has historically lacked most of these elements. The reform proposals of 2024 and 2025 represent the most serious attempt in the country's history to address these deficiencies comprehensively. Their success will depend not only on the quality of their design but on whether the political will exists to implement them faithfully and to resist the inevitable pressures to weaken them.

CHAPTER TWO: THE ANTI-CORRUPTION COMMISSION OF BANGLADESH: CONSTITUTIONAL DESIGN, POLITICAL CAPTURE, AND THE REFORM IMPERATIVE

2.1 The Origins of Anti-Corruption Governance in Bangladesh

Bangladesh is, by any credible measure, one of the most corrupt states in the world. Transparency International has consistently ranked it among the lowest performers on its Corruption Perceptions Index. For many years after its independence in 1971, Bangladesh ranked at or near the absolute bottom of global corruption rankings, earning the unwelcome distinction of being labelled by some observers as a "basket case" of corruption even more persistently than it was labelled an economic one. While that extreme characterisation has become less appropriate as the country's economy has developed, corruption remains one of the most pervasive and damaging features of Bangladeshi public life, distorting the allocation of public resources, undermining the delivery of services to citizens, generating persistent inequality, and corroding the legitimacy of democratic institutions.

The institutional response to this problem has a history that predates the Anti-Corruption Commission established in 2004. The first anti-corruption body in Bangladesh was the Bureau of

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Anti-Corruption (BAC), established in 1957 under the Prevention of Corruption Act of 1947, which Bangladesh inherited from the British colonial legal system. The BAC operated for nearly half a century as a nominally independent investigative body, but in practice it was an instrument of the executive, under the control of the Home Ministry, and subject to the same political pressures and patronage networks that produced the corruption it was supposed to address. Its record of prosecutions was largely limited to low and mid-level officials. Senior political figures and their associates enjoyed de facto immunity.

The political watershed that led to the creation of the Anti-Corruption Commission was the Caretaker Government period of 2006 to 2008, when a military-backed administration attempted to address what it characterised as endemic corruption at the highest levels of the political establishment. The interim government of that period, operating under a declared state of emergency that suspended many constitutional protections, established the Anti-Corruption Commission under the Anti-Corruption Commission Act of 2004, transforming the old Bureau of Anti-Corruption into a nominally independent statutory body with enhanced investigative powers and a mandate to operate independently of the executive.

The creation of the ACC was, on its face, a significant institutional development. The Commission was given the authority to investigate alleged corruption by any person, including officials of the government and state-owned enterprises. It could summon witnesses, examine records, make arrests, and file cases in special courts designated for corruption trials. Its chairman and commissioners were to be appointed by the President on the recommendation of a Search Committee, a process that was at least formally distinct from straightforward executive appointment. The Act specified that commissioners could not be removed except through a process modelled on that for removing superior court judges.

The ACC's initial performance was, by Bangladesh's historical standards, extraordinary. Under the emergency period of 2007 and 2008, the Commission investigated and filed cases against dozens of senior political figures from both major parties, including sitting ministers, former ministers, prominent businesspeople, and even the heads of the two main political dynasties: Sheikh Hasina of the Awami League and Khaleda Zia of the Bangladesh Nationalist Party. The spectacle of senior political figures being arrested and charged with corruption was unprecedented in Bangladesh's history. Whatever one thought of the military-backed government that drove this process, the episode demonstrated that effective anti-corruption enforcement was technically possible even in Bangladesh.

2.2 The Capture of the Commission: Systemic Analysis of a Constitutional Failure

What followed the restoration of elected government in 2009 was, from a constitutional accountability perspective, deeply instructive about the political economy of anti-corruption institutions. The Awami League government that came to power in January 2009, under the leadership of Sheikh Hasina, had been one of the primary targets of the anti-corruption drive of 2007 and 2008. Sheikh Hasina herself had faced corruption charges that she consistently characterised as politically motivated. When the AL came to power with an overwhelming majority, it had both the motive and the means to reshape the ACC in ways that would ensure it no longer posed a threat to the ruling establishment.

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The mechanism of capture was sophisticated and gradual rather than crude and immediate. The government did not simply abolish the ACC or overtly repeal its independence provisions. Instead, it employed a series of more subtle measures that, taken together, systematically undermined the institution's operational independence while maintaining its formal existence as a legitimating facade.

The first mechanism was personnel capture through the appointment process. The Search Committee procedure for appointing commissioners, while formally distinct from direct executive appointment, was in practice controlled by the government. The government determined the composition of the Search Committee, which in turn recommended candidates for the President's approval. The President, constitutionally bound to act on the advice of the Prime Minister, approved whoever the government wished to appoint. Over time, the Commission came to be staffed by individuals whose primary qualification was their perceived political reliability rather than their professional competence or demonstrated independence.

The second mechanism was selective prosecution. The cases filed during the 2007 and 2008 emergency period against senior AL figures, including Sheikh Hasina herself, were progressively stayed, withdrawn, or allowed to lapse through judicial non-prosecution. Simultaneously, the Commission's investigative energies were directed with increasing intensity toward figures associated with the opposition BNP and its allies. This pattern of selective prosecution transformed the Commission from a genuinely independent accountability institution into what critics, including international observers and domestic civil society organisations, described as a partisan weapon. Corruption by AL-affiliated figures was investigated rarely, prosecuted infrequently, and punished almost never. Corruption alleged against BNP figures was investigated aggressively, prosecuted zealously, and publicised extensively.

The third mechanism was resource deprivation. The Commission's budget was kept at a level that made serious large-scale investigation difficult. Its investigation wing was understaffed and underpaid relative to the sophistication of the corruption it was supposed to investigate. The financial forensics capacity required to trace complex money laundering through international banking systems, to penetrate the offshore corporate structures through which large-scale corruption is typically concealed, and to conduct the kind of multi-year investigations that major corruption cases require, was simply not available. This resource deprivation was not accidental; it reflected a deliberate political choice by successive governments to keep the Commission technically alive but operationally limited.

The fourth mechanism was legal restriction through amendment. The government amended the ACC Act to narrow its jurisdiction in certain areas, to limit its investigative powers in others, and to create procedural requirements that made prosecution of senior officials more burdensome. These amendments were presented as technical improvements in the legal framework but functioned in practice to reduce the Commission's effective reach.

The result of these four mechanisms operating in combination over more than a decade was an institution that had become, in the words of Transparency International Bangladesh and multiple international human rights organisations, little more than a tool of political persecution. A 2022 report by the Asia-Pacific Group on Money Laundering found significant deficiencies in

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Bangladesh's anti-corruption and anti-money laundering framework, noting specifically the lack of effective investigation of politically exposed persons and the absence of prosecution of senior officials. The ACC's own statistics revealed a pattern of prosecution that was conspicuously skewed against opposition-aligned individuals.

2.3 The Post-2024 Reckoning and the Commission's New Mandate

The collapse of the Awami League government in August 2024 produced an immediate and dramatic shift in the ACC's political context. Within weeks of the formation of the Yunus interim government, the Commission launched investigations into dozens of senior AL officials, business figures associated with the former government, and members of the Hasina family's extended network. The scale and pace of these investigations was unprecedented in the Commission's history. Several senior AL figures were arrested. Asset declarations were demanded from hundreds of officials. International cooperation was sought to trace funds allegedly moved offshore during the AL years.

This post-2024 enforcement surge raises important constitutional questions that go beyond the immediate political satisfaction of seeing a previously protected class of officials subjected to accountability. The same structural features that allowed the ACC to function as a tool of political persecution under the AL remain present. The appointment process is still subject to executive influence. The budget is still controlled by the finance ministry. The investigative priorities are still susceptible to political direction. If the current anti-corruption drive is genuine rather than a continuation of the previous pattern of selective prosecution, it must be grounded in structural reforms that will prevent the next elected government from redirecting the Commission's energies in the same way that the AL did.

The Constitutional Reform Commission's recommendations of January 2025 addressed this structural problem directly. The CRC recommended that the ACC be given constitutional status, with its existence, mandate, and basic operational independence guaranteed at the constitutional level rather than merely in ordinary legislation. This recommendation, if implemented, would mean that any government seeking to abolish the ACC or fundamentally alter its independence provisions would need a constitutional amendment rather than an ordinary majority in parliament, a significantly higher political bar.

The CRC also recommended that ACC commissioners be appointed through the National Constitutional Council rather than through the existing Search Committee process controlled by the executive. This is a crucial reform. The NCC's multipartisan composition, drawing members from the executive, both houses of parliament including the opposition, the judiciary, and other institutional sources, is designed to prevent any single political force from controlling the appointment of ACC commissioners. If a future government wishes to appoint a compliant commissioner, it will need to persuade a majority of the NCC, including opposition members and the Chief Justice, that the proposed appointment is appropriate.

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2.4 Jurisprudential Dimensions of Anti-Corruption Accountability

The constitutional jurisprudence of anti-corruption institutions raises several profound questions that deserve extended treatment, for they are questions that cut to the heart of how a democratic state governs itself in conditions of pervasive corruption.

The first question concerns the relationship between anti-corruption enforcement and the rule of law. There is an apparent paradox here: the very institutions that are supposed to enforce the rule of law are themselves subject to the pressures and pathologies of a legal system that operates in a context of pervasive corruption and political interference. The ACC cannot effectively prosecute corruption in the judiciary if the judges before whom it brings cases are themselves subject to executive pressure. It cannot effectively trace corruption in the executive branch if the finance ministry controls its budget. It cannot effectively protect its witnesses if the police service that is supposed to protect them is under the control of the very officials being investigated. Anti-corruption institutions exist within a systemic context, and their effectiveness is constrained by the quality of the broader institutional environment in which they operate.

This insight leads to what scholars of corruption have called the "second-generation" approach to anti-corruption reform. The first-generation approach focused on creating anti-corruption agencies with strong mandates and resources. The second-generation approach recognises that anti-corruption agencies alone cannot solve corruption, because corruption is a systemic problem with systemic causes. Effective anti-corruption requires not only enforcement institutions but also systemic reforms in the political economy that creates corruption in the first place: transparent public procurement systems, civil service salaries that reduce the economic necessity of corruption for officials, campaign finance regulations that limit the influence of corrupt money in politics, whistleblower protection systems that enable citizens and officials to report corruption without fear of retaliation, and freedom of information regimes that expose corrupt decisions to public scrutiny.

The second jurisprudential question concerns the relationship between anti-corruption enforcement and due process rights. The experience of Bangladesh's 2007 and 2008 emergency period, when hundreds of individuals were arrested on corruption charges without adequate judicial oversight, illustrates the danger that aggressive anti-corruption enforcement can itself become a form of state abuse. Individuals accused of corruption have fundamental rights: the right to a fair trial, the right to be presumed innocent until proven guilty, the right to legal representation, the right not to be subject to arbitrary arrest or detention. Anti-corruption agencies that operate in ways that violate these rights are not enforcing the rule of law; they are substituting one form of lawlessness for another.

The constitutional design of the ACC must therefore reflect a careful balance between effectiveness and rights protection. Strong investigative powers must be counterbalanced by robust judicial oversight of arrests, searches, and seizures. The right to speedy trial must be guaranteed to prevent prolonged pre-trial detention as a punishment in itself. The ACC's prosecutorial discretion must be subject to some form of accountability, whether through parliamentary oversight, judicial review, or an independent review mechanism, to prevent its selective use as a political weapon.

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The third jurisprudential question concerns international dimensions of corruption accountability. Large-scale corruption in Bangladesh, as in many developing countries, does not exist in a purely domestic legal space. Stolen assets are routinely moved offshore, typically to financial centres in Western Europe, North America, and the Gulf states. The recovery of these assets requires international legal cooperation, including through mechanisms established under the United Nations Convention Against Corruption (UNCAC), which Bangladesh has ratified. The effectiveness of Bangladesh's anti-corruption regime therefore depends not only on domestic institutional design but on Bangladesh's engagement with international anti-corruption norms and its ability to mobilise international legal assistance.

The post-2024 interim government has made significant efforts to engage international partners in asset recovery. Reports in late 2024 and early 2025 indicated that Bangladesh had formally requested assistance from the United Kingdom, Switzerland, the United States, and several other countries in tracing assets allegedly moved offshore by AL-affiliated figures. Whether these requests will produce actual asset recovery remains to be seen, since the international legal procedures for mutual legal assistance are slow and often politically complicated. But the effort itself represents a significant development in Bangladesh's approach to corruption accountability, and the constitutional and legislative framework for sustained international anti-corruption engagement deserves formal recognition in any reformed accountability architecture.

2.5 The Special Courts and the Problem of Expedited Justice

A distinctive feature of Bangladesh's anti-corruption enforcement framework is the Special Courts established under the ACC Act to try corruption cases. The Special Courts were designed to provide expedited justice, avoiding the notorious delays of the ordinary court system that have historically allowed corruption cases to languish for years or decades without resolution. The theory was that a dedicated court system with specialised expertise and a streamlined procedure could move corruption cases through trial more rapidly, reducing the incentive for defendants to use procedural delay as a strategy for avoiding accountability.

In practice, the Special Courts have had a mixed record. On the positive side, they have handled a substantial caseload and have produced convictions in some high-profile cases. On the negative side, they have been subject to the same political pressures that affect the broader judicial system. Their personnel, appointed through the executive, have sometimes been perceived as susceptible to political influence. Their workload has been enormous, and the staffing and resource constraints that afflict the broader judicial system affect them as well. And the appeals from Special Court decisions go ultimately to the High Court Division and the Appellate Division of the Supreme Court, so any corruption in the superior courts can effectively nullify Special Court convictions on appeal.

The reform of the Special Courts is therefore inseparable from the broader reform of the judiciary. A reconstituted judicial system, with genuinely independent appointment processes and adequate resources, is a necessary condition for effective anti-corruption adjudication. The constitutional reforms proposed in the post-2024 period, if implemented faithfully, would substantially improve the conditions for judicial independence. Whether this improvement will translate into more effective corruption prosecution depends on whether the judicial culture

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changes as the formal institutional structure changes, a question to which there are no easy answers.

CHAPTER THREE: THE ELECTION COMMISSION: THE CONSTITUTION'S HEARTBEAT AND ITS CHRONIC ARRHYTHMIA

3.1 The Constitutional Role of the Election Commission in Democratic Theory

Of all the accountability institutions in a democracy, the Election Commission occupies a uniquely central position. The legitimacy of the entire democratic system rests on the integrity of elections. If elections are free and fair, the democratic chain of accountability is intact: citizens can choose their representatives, and representatives are accountable to citizens because they depend on citizens' votes to maintain their positions. If elections are manipulated, the democratic chain is broken. The government that emerges from a fraudulent election is not democratically accountable; it is, in a fundamental sense, not a democratic government at all. The Election Commission is, therefore, the guardian of democratic legitimacy itself.

This foundational role of the Election Commission is reflected in the care with which it has been constitutionally designed in countries where democratic institutions are strong. In India, the Election Commission is established by Article 324 of the Constitution, which gives it the superintendence, direction, and control of the preparation of electoral rolls and the conduct of elections. The Chief Election Commissioner is given constitutional security of tenure comparable to that of a Supreme Court judge and can be removed only by the same procedure used to remove a Supreme Court judge: through an address of both houses of Parliament on grounds of proved misbehaviour or incapacity. In South Africa, the Electoral Commission is established by Chapter 9 of the Constitution as one of the institutions supporting constitutional democracy, and its composition, independence, and accountability to the National Assembly are all constitutionally specified.

Bangladesh's constitutional framework for the Election Commission has been substantially weaker than these models. Article 118 of the Bangladesh Constitution establishes the Election Commission as a constitutional body, consisting of a Chief Election Commissioner and such number of other Election Commissioners as the President may determine. But the provisions for their appointment and removal have historically been inadequate to guarantee genuine independence. Prior to the establishment of the Search Committee process in 2009, the President appointed Election Commissioners on the advice of the Prime Minister, giving the ruling party effective control over the composition of the body responsible for conducting elections. The Search Committee process, introduced through the Election Commission Act 2022, added a layer of procedural formality but did not fundamentally alter the reality of executive control.

3.2 A History of Electoral Manipulation: The Record That Demands Accountability Reform

The history of Bangladesh's elections is, with several honourable exceptions, a history of manipulation by whoever held power. The mechanics of this manipulation have evolved over the

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decades, but the underlying political dynamic has remained distressingly constant: the party in government uses its control over state resources, the police, the administrative apparatus, and the election machinery to ensure its own victory.

The elections of 1991 and 1996, conducted under Caretaker Governments, stand as the principal exceptions to this pattern. The Caretaker Government system, under which a non-partisan interim administration takes over from the elected government in the weeks before an election, was specifically designed to remove the incumbent from the equation and allow genuinely free competition. The elections of 1991 and 1996 are widely regarded as the most credible polls Bangladesh has held, and they produced transfers of power that reflected actual popular choice.

The elections of 2014 and 2018 represent the nadir of Bangladesh's electoral experience. In 2014, the BNP and its allies boycotted the election, leaving the AL to run against token opposition. In 153 of the 300 constituencies, AL candidates were returned unopposed. In the remaining constituencies, the margin of victory in most cases was implausible by any serious statistical analysis. International observers, including the EU Election Observation Mission and the Carter Center, declined to observe the 2014 elections, citing concerns about the conditions for a credible process. The 2018 elections were even more scandalous. Reports from across the country described systematic stuffing of ballot boxes, intimidation of opposition candidates and voters, and the disappearance of opposition polling agents from centres. The Election Commission did nothing to address these reports and certified results that independent analysts regarded as fraudulent.

The appointment of the Election Commission under the Awami League was a central element of this fraudulent electoral machinery. Commissioners appointed through a process controlled by the AL government could not be expected to exercise genuine independence. Their institutional survival depended on their relationship with the ruling party, and the incentive structure was one that rewarded compliance and punished independence. The commissioners who oversaw the 2014 and 2018 elections were not, in most cases, simply corrupt individuals who had decided to abuse their office for personal gain. They were officials operating within an institutional framework that provided no meaningful insulation from political pressure, and in that context they did what such officials typically do: they served the interests of those who appointed them.

3.3 The Constitutional Reform of the Election Commission: Article 118 and Its Proposed Amendment

The post-2024 constitutional reform agenda has given significant attention to the Election Commission, recognising that no amount of legal and procedural reform of the electoral system will produce genuinely free elections if the body responsible for conducting them is subject to political capture.

The Constitutional Reform Commission recommended a fundamental restructuring of the appointment process for Election Commissioners. Under the proposed system, appointment would be made through the National Constitutional Council, requiring multipartisan consensus rather than executive nomination with nominal procedural trappings. The CRC also recommended strengthening the tenure and removal protections for Commissioners, specifying

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grounds for removal that are genuinely limited to incapacity or proved misbehaviour, and requiring a high political threshold, including the approval of both houses of parliament, for removal.

The July Charter of 2025, incorporated in the constitutional reform package submitted to the February 2026 referendum, specifically included the reconstituted Election Commission among the institutions to be created "in accordance with the process described in the July Charter." The referendum endorsement of this proposal carries significant democratic legitimacy: voters were asked whether they approved the establishment of an Election Commission through the new multipartisan process, and sixty-one percent said yes.

But the translation of this democratic mandate into institutional reality faces several challenges. The most immediate is the current political dynamic, in which the BNP, having secured a two-thirds majority in the February 2026 parliamentary elections, now has both the incentive to maintain control of the appointment process and the formal power to resist implementing the proposed constitutional reforms. The BNP's reluctance to convene the Constitution Reform Council as mandated by the July Charter, as reported by multiple observers in March and April 2026, raises serious concerns about whether the electoral commission reform will actually be implemented.

This dynamic illustrates a fundamental lesson of constitutional design: democratic mandates for institutional reform are necessary but not sufficient. A referendum can establish that the public wants an independent election commission. It cannot, by itself, force a government with a parliamentary supermajority to create one. What is required, in addition to the democratic mandate, is a combination of sustained civil society pressure, international attention, and the internal dynamics of the political system that creates costs for non-compliance.

3.4 Technical Aspects of Electoral Commission Independence: International Standards and Bangladesh's Compliance Gap

The international community has developed a set of standards for Election Management Bodies (EMBs) that provides a useful benchmark for evaluating both Bangladesh's existing commission and the proposed reforms. The Venice Commission of the Council of Europe, the Electoral Integrity Project at Harvard University, and the United Nations Development Programme have all published detailed guidance on the structural conditions for effective and independent election management.

These standards converge on several specific requirements. First, the legislative framework governing elections must be stable: major changes to election law should not be made within a defined period before an election, typically twelve months, to prevent the governing party from manipulating the rules for its own advantage. Bangladesh has repeatedly violated this norm, with significant amendments to electoral laws made in the run-up to elections. Second, commissioners must have security of tenure that prevents their removal for politically inconvenient decisions. Third, the commission's budget must be insulated from executive manipulation by being charged directly to the consolidated fund rather than subject to annual appropriation. Fourth, the commission must have genuine operational independence in the conduct of elections, including

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the power to deploy its own security personnel rather than depending entirely on a police service controlled by the executive.

Bangladesh's compliance with these standards has been persistently deficient. The existing constitutional and statutory framework provides formal security of tenure for Election Commissioners but, as the record demonstrates, the appointment of loyal commissioners in the first instance makes formal tenure protection largely irrelevant. The budget is subject to normal appropriation procedures. Operational independence is limited by dependence on the police and the civil administration, both under executive control.

The proposed reforms address some but not all of these deficiencies. The reconstituted appointment process through the NCC would address the most critical structural failure: the appointment of politically loyal commissioners. The budget proposal to charge the commission's expenses to the consolidated fund would address the financial independence dimension. But the operational independence question, particularly the commission's dependence on the police and civil administration during elections, requires separate attention that the reform proposals do not fully provide.

CHAPTER FOUR: THE HUMAN RIGHTS COMMISSION: CONSTITUTIONAL PROMISE, INSTITUTIONAL DEFICIENCY, AND THE POST-2024 TRANSFORMATION

4.1 The International Framework: Human Rights Commissions as Constitutional Actors

The emergence of National Human Rights Institutions (NHRIs) as a distinct category of constitutional actor is one of the most significant developments in international human rights law and constitutional governance over the past three decades. The Paris Principles, adopted by the United Nations General Assembly in 1993, established the international standard framework for the independence and effectiveness of NHRIs. Under the Paris Principles, a genuine NHRI must have a broad mandate to promote and protect human rights, be constitutionally or legislatively mandated, be independent of the government, have the capacity to investigate complaints, publish reports, and engage with international human rights mechanisms, and be adequately resourced to perform its functions.

The significance of NHRIs within constitutional governance has been growing rapidly in the comparative constitutional literature. Scholars including Sonia Lawrence, Murray Hunt, and Carolyn Evans have explored the ways in which NHRIs can supplement and strengthen the protection of constitutional rights, particularly in contexts where the judiciary is subject to political constraints or where access to the courts is limited by cost or complexity. NHRIs can receive complaints from individuals who lack the resources to litigate, conduct systemic investigations into patterns of human rights abuse, engage in public education and awareness-raising, advise governments on the human rights implications of proposed legislation, and report to international human rights treaty bodies on the state of rights protection in their countries.

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In 2024 and 2025, a significant development in the global NHRI landscape was the Global Alliance of National Human Rights Institutions' (GANHRI) adoption of revised accreditation criteria that placed greater emphasis on demonstrating operational independence rather than merely formal independence. This shift reflected lessons learned from contexts, including Bangladesh, where formally independent institutions had in practice functioned as instruments of the governments that created them. The revised criteria require that accredited NHRIs demonstrate a track record of engaging genuinely with politically sensitive human rights issues rather than confining themselves to safe territory.

4.2 The National Human Rights Commission of Bangladesh: A Case Study in Nominal Independence

The National Human Rights Commission of Bangladesh was established under the National Human Rights Commission Act 2009, within months of the Awami League government's assumption of power. The timing was politically significant: the incoming government had campaigned on a human rights platform, and the creation of an NHRI was both a fulfillment of campaign commitments and a signal to international donors and partners that Bangladesh was committed to improving its human rights record.

The Commission's mandate, as established by the 2009 Act, was comprehensive on paper. It could investigate complaints of human rights violations, conduct inquiries into systemic human rights concerns, recommend appropriate remedies, advise the government on legislative and administrative matters with human rights implications, and engage with international human rights treaty bodies. Its chairman and commissioners were to be appointed by the President on the recommendation of a Search Committee, giving the appointment process at least a formal claim to procedural independence.

The Commission's actual performance has diverged sharply from this impressive mandate. The fundamental problems were threefold. First, the Commission was chronically underfunded. Its annual budget was a fraction of what a genuine national human rights institution would require to conduct serious investigations, manage a complaints processing system, and engage in systematic monitoring of detention centres, police stations, and other sites of potential abuse. In comparative terms, Bangladesh's NHRC budget was among the lowest in South Asia relative to the size of the country's population. Second, its leadership was perceived as politically safe. Chairpersons and commissioners appointed through the Search Committee process were individuals who had demonstrated their unwillingness to challenge the government on sensitive matters. Third, and perhaps most consequentially, the Commission was silent on precisely the human rights violations that most urgently required attention: enforced disappearances, extrajudicial killings, the suppression of political opposition, and the abuse of digital security legislation to criminalise free expression.

The Commission's silence on the Digital Security Act (DSA), one of the most serious threats to human rights in Bangladesh during the AL years, is particularly revealing. The DSA was used to arrest and prosecute hundreds of journalists, activists, and ordinary citizens for online content that the government found objectionable. It was consistently criticised by international human rights organisations, including Amnesty International, Human Rights Watch, and the United

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Nations Special Rapporteur on Freedom of Expression, as a law incompatible with international human rights standards. The NHRC, rather than adding its voice to this criticism, remained conspicuously silent on the DSA's application, issuing no systematic report on its implementation and making no formal recommendation to the government for its amendment or repeal.

This silence cannot be explained by lack of jurisdiction. The Commission's mandate explicitly included advising the government on legislation with human rights implications, and the NHRC could have investigated individual cases of DSA abuse and published systematic findings that would have created at least some accountability for the law's application. The silence was a choice, and it reflected the fundamental reality that the Commission was not genuinely independent.

4.3 The Post-2024 Transformation: Interim Government Reforms and Their Constitutional Status

The formation of the Yunus interim government in August 2024 created immediate pressure for the transformation of the Human Rights Commission. The new government, operating in the aftermath of an uprising in which hundreds of people had been killed and thousands injured, faced urgent demands to address the accountability deficit that the Commission's ineffectiveness had left.

Within weeks of assuming power, the interim government amended the National Human Rights Commission Act through an ordinance that significantly expanded the Commission's investigative powers and independence. The ordinance empowered the Commission to conduct its own investigations without requiring police cooperation, to access and inspect facilities controlled by security agencies including detention centres and police stations, to summon documents from any government office, and to operate with greater financial autonomy. A revised Search Committee process was introduced to make future appointments more genuinely independent of executive direction. The head of the Commission was given the same security of tenure as a Supreme Court judge for the purposes of removal.

These were genuinely significant reforms. The expansion of the Commission's investigative powers, particularly its right to inspect security facilities and summon documents, addressed the most glaring operational deficiency of the previous framework. The strengthened removal protection, if honoured in practice, would create meaningful security for future commissioners who chose to exercise genuine independence.

However, the constitutional status of these reforms remains precarious. They were enacted through executive ordinance during a period when no elected parliament existed, meaning their democratic legitimacy rested on the interim government's claim to representative authority rather than on direct parliamentary approval. The subsequent BNP government's reported reluctance to ratify these ordinances, as part of a broader pattern of resistance to the accountability reform agenda, threatens to undermine them. Reports from March 2026 indicate that the new parliament's special committee has recommended against ratifying several of the interim

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government's reform ordinances, including those relating to the Human Rights Commission, on grounds that they require more careful scrutiny and revision.

This reluctance has a familiar political logic. A government with a substantial parliamentary majority, facing the prospect of accountability for its own potential human rights violations, has little incentive to strengthen the institution responsible for investigating such violations. The BNP, during its years in opposition, repeatedly criticised the AL for using state institutions as tools of persecution. In power, facing the temptation of using similar tools against its own adversaries, the incentive structure shifts.

The Constitutional Reform Commission's recommendation to grant the Human Rights Commission constitutional status, as distinct from its current basis in ordinary legislation, would provide some protection against this dynamic. A constitutionally entrenched Commission cannot be weakened by ordinary legislative amendment. But constitutional entrenchment, by itself, does not guarantee operational independence. The lesson of Bangladesh's history is that constitutional provisions providing for independence can be subverted by sufficiently determined political actors. What matters is the combination of constitutional entrenchment, robust appointment processes requiring multipartisan consensus, adequate budgetary protection, and a political culture that creates reputational costs for governments that interfere with the Commission's independence.

CHAPTER FIVE: THE PUBLIC SERVICE COMMISSION AND THE POLITICISATION OF THE BUREAUCRACY: CONSTITUTIONAL DIMENSIONS OF A SYSTEMIC CRISIS

5.1 Bureaucratic Neutrality as a Constitutional Value

The concept of a politically neutral civil service is one of the foundational assumptions of liberal constitutional governance. The theory is straightforward: democratic governments change through elections, but the state continues. A professional civil service, insulated from political patronage and committed to serving the public interest rather than the interest of any particular party, provides the institutional continuity and administrative competence that democratic governance requires. Without such a civil service, the machinery of government becomes a tool of partisan advantage, state resources are diverted to serve political ends, and the quality of public services deteriorates as competence gives way to loyalty as the primary criterion for appointment.

The constitutional basis for a neutral civil service in Bangladesh is found in Articles 133 to 141, which deal with services of Bangladesh, and in the existence of the Public Service Commission as a constitutional body under Articles 137 to 141. The PSC was given the function of conducting examinations for appointment to services of the Republic and advising the President on matters related to service conditions, disciplinary proceedings, and appointments. The constitutional design assumed that the PSC would serve as a buffer between political patronage

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and professional civil service selection, ensuring that appointments to the permanent civil service were made on the basis of merit rather than political connections.

5.2 The Anatomy of Bureaucratic Capture in Bangladesh

The theory of the neutral civil service has been systematically violated in Bangladesh throughout most of the country's post-independence history, and the violation has taken increasingly brazen forms with each successive government. The mechanism of bureaucratic capture in Bangladesh has several layers that operate simultaneously.

The first layer is direct political appointment to senior positions. Bangladesh's civil service has a system of senior positions that are formally subject to merit promotion but in practice have been systematically allocated on the basis of political loyalty. Under the AL governments, senior secretaries, division heads, and district administrators were disproportionately drawn from officers who were perceived as politically reliable, meaning those who had demonstrated their loyalty to the ruling party through their conduct in previous positions. Officers who were not perceived as loyal were posted to inconsequential positions or denied promotion regardless of their professional qualifications. The BNP's approach when in government was indistinguishable in its essential character.

The second layer is the quota system for civil service recruitment. Bangladesh's civil service recruitment has been subject to a quota system that reserves a substantial proportion of positions for specific categories: freedom fighters and their descendants, women, minorities, and district quotas. The quota system, which was the immediate trigger of the July 2024 uprising, had grown over the decades to cover up to fifty-six percent of all civil service positions, with thirty percent reserved for the descendants of freedom fighters who fought in the 1971 liberation war. The AL government had a strong partisan interest in maintaining and expanding the freedom fighter quota, since its own political identity and electoral coalition were substantially grounded in the liberation war narrative. Critics argued that the quota system had become a mechanism for patronage, directing government jobs to AL-affiliated individuals rather than the most qualified candidates.

The July 2024 uprising, which began as a student movement against what students characterised as the unfair perpetuation of the quota system, and which rapidly expanded into a broader demand for the AL government's resignation, led to a fundamental reconsideration of the quota system. The interim government revised the quotas substantially, reducing the freedom fighter quota from thirty percent to five percent and overall reservations from fifty-six percent to around twenty percent, with the Supreme Court subsequently affirming this revised framework.

The third layer of bureaucratic capture is the informal culture of political deference that pervades the civil service. Officials who understand that their promotion and posting depend on political loyalty learn, through professional socialisation, to interpret their duties through a political lens. They delay or obstruct decisions that might embarrass the government. They expedite decisions that benefit the ruling party's allies. They suppress information that might create political problems for their superiors. This informal culture of political deference is the most pervasive

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and most difficult to address through formal institutional reform, because it exists not in the law but in the minds and habits of officials.

5.3 The Public Service Commission: Constitutional Framework and Structural Failure

The Public Service Commission, as a constitutional body, has a formal mandate to conduct merit-based recruitment and to advise on appointment and promotion decisions. In practice, however, the Commission has been unable to function as a genuine buffer against political patronage for several structural reasons.

First, the PSC's mandate is advisory rather than binding with respect to senior appointments. The Commission conducts examinations for entry into the junior and mid-level civil service and can examine and report on senior appointment decisions, but its recommendations are not legally binding on the government. A government determined to make politically motivated senior appointments can do so without formal violation of the PSC's mandate.

Second, the PSC itself has been subject to political capture at the level of its own membership. Commissioners are appointed by the President on the advice of the Prime Minister, creating the same principal-agent problem that afflicts all executive-appointed accountability institutions. PSC commissioners who are perceived as too independent in their examination standards or their advisory opinions have been replaced upon the expiry of their terms with more compliant successors.

Third, the PSC's jurisdiction does not extend to the enormous shadow civil service of government-controlled corporations, state banks, and semi-governmental organisations that have expanded enormously under successive governments. These entities employ hundreds of thousands of people whose appointments are made through processes entirely outside the PSC's purview, creating a vast patronage system that operates in parallel with the formal civil service and that is immune to merit-based accountability.

The Constitutional Reform Commission's proposals for the PSC focus primarily on the appointment process, recommending that PSC members be appointed through the National Constitutional Council rather than by executive nomination. This reform, if implemented, would address the political capture problem at the level of PSC membership. But it would not, by itself, address the advisory rather than binding nature of PSC recommendations for senior appointments, or the enormous shadow civil service that lies outside PSC jurisdiction. A comprehensive reform of the relationship between the political executive and the civil service would require additional legislative measures: the codification of civil service values and standards in legally enforceable terms, the establishment of genuine security of tenure for civil servants against arbitrary political transfer or demotion, and the extension of some form of merit-based accountability to the major state-owned enterprises and semi-governmental bodies.

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CHAPTER SIX: THE COMPTROLLER AND AUDITOR GENERAL: FINANCIAL ACCOUNTABILITY AND THE CONSTITUTIONAL ARCHITECTURE OF PUBLIC SPENDING

6.1 The Theory of Supreme Audit Institutions

The Comptroller and Auditor General (CAG) is the guardian of financial accountability in the constitutional design of Bangladesh, as it is in most parliamentary democracies that inherit the Westminster tradition. The constitutional logic of the CAG's existence is straightforward: the legislature authorises government spending through the budget, the executive implements that spending, and an independent audit institution examines whether the money was actually spent for the purposes authorised and in accordance with applicable legal and procedural requirements. This audit function closes the accountability loop by providing the legislature, and through it the public, with reliable information about how the executive has used the authority to spend that the legislature delegated to it.

The international framework for Supreme Audit Institutions (SAIs) is provided by the Lima Declaration (1977) and the Mexico Declaration (2007), both issued by the International Organisation of Supreme Audit Institutions (INTOSAI). These declarations establish the principles of independence, mandate, competence, and transparency that SAIs must embody to function effectively. The Lima Declaration, in particular, articulates the foundational principle that SAIs can fulfil their mandate only if they are independent of the audited entity and are protected from outside influence. Independence of the SAI from the executive is not merely an organisational preference; it is a constitutional requirement for effective financial accountability.

6.2 Bangladesh's CAG: Constitutional Architecture and Practical Limitations

The CAG of Bangladesh is established by Article 127 of the Constitution, which specifies that there shall be a CAG who shall be appointed by the President and shall perform such duties and exercise such powers in relation to the accounts of the Republic as may be prescribed by or under any law made by Parliament. The CAG is given formal independence through provisions specifying that he or she shall not be removed from office except by the same procedure as used for removing a Supreme Court judge.

The formal constitutional architecture of the CAG appears robust. The security of tenure provision, if honoured, provides meaningful independence protection. The mandate to audit the accounts of the Republic is broad. But the practical effectiveness of the CAG has been significantly limited by several structural features.

The first is the gap between audit and accountability. The CAG's function is to audit and report. It cannot compel remedial action. Reports of financial irregularity, misappropriation, or corruption are submitted to the Public Accounts Committee (PAC) of the Jatiya Sangsad, which is supposed to examine them and hold the executive accountable. In practice, however, the PAC has historically functioned as a bottleneck rather than a conduit for accountability. Under the AL government, the PAC was chaired by an AL member, creating an obvious conflict of interest in examining AL government financial decisions. Its meetings were infrequent, its examination of

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CAG reports was superficial, and its recommendations to the government were rarely implemented.

The second limitation is the technology gap. Financial misappropriation in the modern administrative state often takes sophisticated forms: complex procurement fraud, inflated invoicing, kickback arrangements concealed within contractor payments, and money laundering through multiple layers of corporate and banking structures. The CAG's office, while technically competent in traditional audit methodologies, has limited capacity for the forensic financial analysis required to detect these more sophisticated forms of abuse. The development of this capacity requires substantial investment in personnel training, technology, and international expert cooperation, investment that has not been prioritised by successive governments that had little interest in exposing their own financial management.

The third limitation is the scope of audit jurisdiction. The CAG audits government ministries and departments, but its reach into the vast network of state-owned enterprises, development authorities, and semi-governmental bodies is legally uncertain and practically incomplete. Many of the most significant financial abuses in Bangladesh's public sector have occurred in precisely these entities, which operate with the resources of government but without the formal accountability mechanisms that apply to the core civil service. The Bangladesh Bank, the state commercial banks, and the major development corporations have all been the sites of large-scale financial scandal, but the CAG's ability to conduct meaningful audit of their operations has been limited by legal ambiguity about its jurisdiction.

6.3 The Role of Parliamentary Oversight: The Public Accounts Committee and Its Dysfunction

The relationship between the CAG and the Public Accounts Committee is the critical institutional link in the chain of financial accountability. The PAC, in well-functioning Westminster parliamentary systems, is one of the most powerful accountability instruments available to the legislature. By examining CAG reports in detail, questioning accounting officers, and issuing authoritative findings on financial management, an effective PAC can create genuine accountability for executive spending decisions.

The practice of having the PAC chaired by an opposition member, firmly established in the Westminster tradition as a fundamental convention of parliamentary accountability, has never been consistently observed in Bangladesh. Under the AL government, the PAC was chaired by AL members who had little incentive to aggressively examine the financial management of their own government. The dysfunction of the PAC was therefore structural, not merely a product of the character of particular individuals.

The Constitutional Reform Commission has recommended that the chairs of parliamentary committees, including the PAC, be drawn from the opposition as a constitutional requirement rather than merely a convention. This is one of the most important structural reforms proposed for the legislature, and its significance for financial accountability should not be underestimated. An opposition-chaired PAC, operating with genuine investigative powers and adequate staff support, could become one of the most effective accountability institutions in the system,

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providing regular, systematic examination of CAG reports and holding accounting officers genuinely responsible for financial irregularities.

The July Charter includes this reform as one of its core commitments. The February 2026 referendum endorsed it as part of the broader reform package. Whether the BNP government, with its two-thirds majority, will implement this reform in a way that genuinely empowers opposition members to hold it financially accountable, or will find ways to dilute it while maintaining its formal appearance, remains one of the crucial tests of the post-election accountability agenda.

CHAPTER SEVEN: THE OMBUDSMAN AND THE RIGHT TO REDRESS: A CONSTITUTIONAL INSTITUTION IN WAITING

7.1 The Ombudsman in Constitutional Theory

The concept of the Ombudsman originated in Sweden in 1809, where the Parliamentary Ombudsman (Riksdagens ombudsman) was established as an officer of the legislature empowered to investigate complaints from citizens against the public administration and to recommend remedies for administrative injustice. The concept spread throughout the world over the following century and a half, and today most parliamentary democracies have some form of Ombudsman institution, adapted to their specific constitutional contexts but sharing the core function of providing an accessible, low-cost mechanism through which ordinary citizens can seek redress for administrative injustice without the expense and complexity of litigation.

The theoretical importance of the Ombudsman as a constitutional institution lies in its ability to address the accountability gap created by the expansion of the administrative state. Citizens interact with the state not primarily through the legislature or the courts but through the administrative apparatus: tax offices, permit agencies, social service offices, regulatory bodies, and the vast array of licensing and compliance mechanisms through which the modern state regulates daily life. When citizens are treated unfairly by administrative officials, they have formal legal remedies in principle: they can appeal adverse decisions through internal administrative review, or they can seek judicial review of unlawful administrative action. But these remedies are expensive, slow, and often inaccessible to the ordinary citizen without legal expertise and financial resources.

The Ombudsman provides a more accessible alternative. By accepting complaints in simple language, investigating them through its own resources, and recommending remedies that administrative agencies are expected to implement, the Ombudsman puts the machinery of administrative accountability within reach of ordinary people. The Ombudsman also serves a systemic function: by identifying patterns of administrative unfairness in its investigation of individual complaints, it can recommend systemic reforms that address structural deficiencies in the administrative system.

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7.2 Bangladesh's Ombudsman: A Constitutional Phantom

Article 77 of the Bangladesh Constitution mandates the establishment of an Ombudsman institution: "Parliament may, by law, provide for the establishment of the office of Ombudsman." This provision has been in the Constitution since 1972. Parliament enacted the Ombudsman Act in 1980. And for more than four decades, the Ombudsman institution established by this Act has simply not functioned. No Ombudsman has ever been appointed under the 1980 Act. The constitutional mandate remains on paper, the enabling legislation exists on the statute books, and the institution exists nowhere in reality.

This is a constitutional failure of remarkable persistence and brazenness. It is not the failure of an institution to perform its mandate adequately; it is the complete non-existence of an institution whose existence is mandated by the Constitution and enabled by ordinary legislation. Successive governments of both major parties have found, when in power, that the absence of an independent ombudsman serves their interests better than its presence. A functioning Ombudsman would receive, investigate, and publicise complaints about the very administrative actions through which governments exercise power and reward their supporters. Its absence is therefore not an oversight but a choice, made and remade by every government that has had the opportunity to establish the institution and has declined to do so.

The constitutional reform proposals of 2024 and 2025 address this lacuna by proposing that the Ombudsman be given stronger constitutional grounding, with its appointment through the National Constitutional Council rather than through ordinary executive discretion, and with its mandate, structure, and resources specified in greater constitutional detail to prevent continued neglect. The CRC specifically recommended that the Ombudsman be established as a constitutionally entrenched institution, with its appointment procedure and basic mandate specified at the constitutional level, creating a mandatory rather than permissive obligation to establish and maintain the institution.

7.3 The Jurisprudence of Administrative Redress: Constitutional Rights to Good Governance

The right to seek redress for administrative injustice has gradually been recognised as a constitutional right in several jurisdictions, and this development has important implications for Bangladesh's reform agenda. In South Africa, the Constitution explicitly guarantees the right to administrative action that is lawful, reasonable, and procedurally fair, and the right to written reasons for administrative decisions. This constitutional entrenchment of administrative justice rights, implemented through the Promotion of Administrative Justice Act (PAJA), has been transformative in South African law, creating judicially enforceable standards for administrative conduct across all government functions.

In the European Union context, Article 41 of the EU Charter of Fundamental Rights guarantees the right to good administration, including the right to have affairs handled impartially and within a reasonable time, the right to be heard, the right to access files, and the right to written reasons for decisions. The EU Ombudsman, established under Article 228 of the Treaty on the Functioning of the European Union, investigates cases of maladministration by EU institutions

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and bodies, applying these good administration standards to the European administrative apparatus.

Bangladesh's existing constitution does not explicitly include a right to good administration, though the right to equality before the law and the protection against arbitrary state action provide some basis for administrative law challenges. The CRC's proposals to expand the list of fundamental rights include provisions that would move Bangladesh closer to an explicit constitutional guarantee of administrative justice. If implemented, these provisions would transform the nature of the Ombudsman's function: instead of operating as a discretionary service to citizens, it would be enforcing constitutionally mandated standards of administrative conduct.

CHAPTER EIGHT: THE NATIONAL CONSTITUTIONAL COUNCIL: A NEW ARCHITECTURE FOR INSTITUTIONAL INDEPENDENCE

8.1 The Problem the NCC is Designed to Solve

The National Constitutional Council proposed by the Constitutional Reform Commission in January 2025 represents the most ambitious and innovative element of Bangladesh's constitutional reform agenda. It is designed to address a structural problem that has undermined every accountability institution in Bangladesh's history: the control of appointment processes by the executive branch.

The logic is elegant in its simplicity. If all accountability institutions: the ACC, the Human Rights Commission, the Election Commission, the PSC, the CAG, the Ombudsman, and others, are appointed through processes that the executive effectively controls, then all of these institutions will ultimately serve the executive's interests rather than acting as independent checks upon them. The NCC breaks this structural dependence by creating a genuinely multipartisan appointment body whose composition prevents any single political force from controlling its decisions.

The NCC as proposed by the CRC would consist of: the President; the Prime Minister; the Leader of the Opposition in the National Assembly; the Speaker of the National Assembly; the Speaker of the Senate; the Chief Justice; the Deputy Speaker of the National Assembly, to be drawn from the opposition; the Deputy Speaker of the Senate; and one member elected by the members of both houses who do not belong to either the ruling party or the main opposition party.

This composition has several notable features. First, it includes representatives of the executive, the legislature, and the judiciary, creating genuine inter-branch participation in the appointment of accountability institutions. Second, it explicitly includes the Leader of the Opposition and requires that certain positions, including the Deputy Speaker of the National Assembly, be held by opposition members, preventing the NCC from being captured by the governing majority. Third, it includes a member elected by minority parties, ensuring that smaller political forces have a voice in the process.

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8.2 Comparative Models: The Global Experience with Appointment Bodies

Bangladesh's proposed NCC is not without international precedent, and the comparative experience offers valuable lessons about both the strengths and the limitations of such bodies.

The Kenya example is instructive. The Kenyan Constitution of 2010, which emerged from a similar post-crisis constitutional reform process, established a comprehensive network of independent commissions and institutions, including an Independent Electoral and Boundaries Commission, a National Human Rights Commission, the Ethics and Anti-Corruption Commission, and others. Appointment to these bodies is made through a process involving parliamentary approval, with nomination by a Selection Panel that includes members from civil society, professional associations, and other non-governmental bodies. The Kenyan model has had mixed results: some institutions have functioned with genuine independence, while others have been subject to political pressure in ways that their constitutional design did not prevent.

The Sri Lanka example provides a cautionary tale. The Seventeenth Amendment to the Sri Lankan Constitution, enacted in 2001, established a Constitutional Council to oversee appointments to key accountability institutions. The Eighteenth Amendment, enacted in 2010 under President Mahinda Rajapaksa, abolished the Constitutional Council and restored executive control over these appointments, demonstrating that constitutional arrangements for institutional independence can be reversed by sufficiently determined political actors with the requisite parliamentary majority. The Nineteenth Amendment, enacted in 2015, partially restored the Constitutional Council arrangements, and the Twenty-First Amendment of 2022 further reinforced them, creating an ongoing cycle of institutional reform, reversal, and re-restoration.

Sri Lanka's experience is directly relevant to Bangladesh because it illustrates the vulnerability of even constitutionally entrenched appointment bodies to constitutional amendment by a party with sufficient parliamentary control. If a future government in Bangladesh commands a two-thirds majority in both houses, it could in principle amend or abolish the NCC through the normal constitutional amendment process. The July Charter's proposal that constitutional amendments require approval by a majority of the proposed upper house as well as a two-thirds majority in the National Assembly would add an additional hurdle, since the upper house's proportional composition would be more likely to prevent supermajority control by any single party. But this is not an absolute guarantee, and the lesson of comparative experience is that formal entrenchment, while important, must be supplemented by a political culture that regards interference with accountability institutions as genuinely unacceptable.

The South African Constitutional Court's jurisprudence on the removal of the Public Protector, in the case of Economic Freedom Fighters v Speaker of the National Assembly (2017), provides an important precedent for the judicial enforcement of institutional independence against political pressure. The Court held that the National Assembly's failure to properly investigate the President's alleged misconduct through the removal process was a violation of the Constitution, and issued a remedial order requiring the Assembly to conduct a proper investigation. This case demonstrates that, in a context where the judiciary is genuinely independent and willing to enforce constitutional norms, constitutional provisions protecting accountability institutions can be made real even against the resistance of a determined political majority.

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8.3 The Composition of the NCC: Jurisprudential Analysis of Its Design Choices

The specific composition of the proposed NCC raises several jurisprudential questions that deserve careful analysis.

The first question concerns the inclusion of the President as a member. The President of Bangladesh, under both the existing constitution and the reform proposals, is primarily a ceremonial figure who acts on the advice of the Prime Minister in most matters. If the President is formally a member of the NCC but is expected to vote in accordance with the Prime Minister's preference, the President's inclusion adds little genuine independence to the NCC. What matters is whether the President, in the NCC context, exercises independent judgment or acts as an extension of the Prime Minister. This depends both on the legal framework, specifically whether the President's NCC votes are among the matters on which he acts independently rather than on advice, and on the character of the individual who holds the office. The CRC has proposed expanding the President's independent powers, which would strengthen the President's capacity for genuinely independent NCC participation.

The second question concerns the role of the Chief Justice. Judicial members of appointment bodies in comparative constitutional practice carry both advantages and risks. The advantage is that the Chief Justice brings professional qualifications and a commitment to the rule of law that other NCC members, as elected politicians, cannot claim with the same credibility. The risk is that the Chief Justice's involvement in politically sensitive appointment decisions may compromise the appearance of judicial impartiality, particularly if the Chief Justice subsequently has to adjudicate challenges to the appointments made or the conduct of the appointed officials.

Some comparative constitutional scholars argue that judicial participation in non-judicial appointment bodies should be avoided precisely because of this risk to judicial independence. The argument is that the judiciary's legitimacy depends on its separation from the political appointment process, and that a Chief Justice who participates in the appointment of accountability institution heads is less able to appear impartial when those institutions' decisions are challenged in court. Others argue that the judiciary's participation is essential to guarantee the constitutional legitimacy of the appointment process, and that the risk of compromised judicial impartiality is outweighed by the benefit of having judicial oversight of politically sensitive appointments.

The CRC's design takes the latter view, which is a defensible choice but one that requires careful management. Clear protocols about the Chief Justice's role in the NCC, including whether and how the Chief Justice should participate in discussions about appointments that might subsequently come before the Supreme Court, would help to manage the risk of the appearance of judicial bias.

The third question concerns the representation of civil society and expert opinion in the NCC. Many comparative models of institutional appointment include representatives of civil society organisations, professional associations, and academic experts alongside or instead of purely political representation. The Indian collegium system, while deeply controversial in its own right, at least ensures that judicial appointments are made by legal professionals rather than

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politicians. The Kenyan Selection Panel includes civil society members. Bangladesh's proposed NCC is entirely composed of governmental figures: elected politicians, the President, and the Chief Justice. There is no formal role for civil society, academia, professional associations, or any other non-governmental voice.

This is a significant design limitation. Civil society organisations in Bangladesh played a crucial role in the July 2024 uprising and in the subsequent constitutional reform process. Their exclusion from the NCC composition reflects a persistent tendency in Bangladesh's political culture to regard institutional governance as the preserve of governmental actors, with civil society relegated to a lobbying role rather than a formal institutional one. Including a small number of civil society representatives, selected through a credible transparent process, would strengthen the NCC's democratic legitimacy and provide additional insulation against partisan capture.

8.4 The NCC and the Problem of Political Gridlock

A potential criticism of the multipartisan NCC design is that it could produce political gridlock: if the NCC members cannot agree on appointments, the institutions it is supposed to staff will remain vacant, potentially with worse consequences than having them staffed by politically compliant individuals appointed through a less rigorous process.

This concern is not hypothetical. In Sri Lanka, the Constitutional Council established by the Seventeenth Amendment sometimes failed to make appointments because its members could not reach agreement, leaving important positions vacant for extended periods. In Kenya, appointment processes for constitutional commissions have sometimes been delayed significantly by political disputes within the selection panels.

The design of the NCC must therefore include clear procedures for managing disagreement, including defined timelines for nominations and appointments, mechanisms for resolving disputes, and provisions for what happens if the NCC fails to make an appointment within the specified timeframe. The CRC's proposals do not appear to address these procedural details in sufficient depth, which is a design gap that will need to be addressed in the implementing legislation.

One approach is to include a default appointment mechanism: if the NCC fails to agree on an appointment within a defined period, the decision passes to an alternative body, perhaps the Supreme Court or a senior member of the judiciary acting in a defined constitutional capacity. This creates an incentive for NCC members to reach agreement by imposing a consequence for failure that all parties may wish to avoid. But the design of such a mechanism requires careful attention to ensure that it does not become the primary route to appointment, undermining the NCC's multipartisan function.

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CHAPTER NINE: THE ATTORNEY GENERAL AND THE CONSTITUTIONAL LAW-STATE RELATIONSHIP: BETWEEN GOVERNMENT LAWYER AND CONSTITUTIONAL GUARDIAN

9.1 The Constitutional Role of the Attorney General

The Attorney General of Bangladesh occupies a position of deep constitutional ambiguity that has rarely been examined with the seriousness it deserves. Article 64 of the Constitution provides for the appointment of an Attorney General who shall have the right of audience in all courts in Bangladesh and who shall perform such other duties as are assigned to him by the President or under any law made by Parliament.

The structural ambiguity lies in the Attorney General's dual role: as the government's chief legal adviser and principal representative in litigation, and as a constitutional officer with some responsibility to the broader legal order. In the Westminster tradition from which Bangladesh's constitution derives, the Attorney General is expected to serve the public interest rather than merely the partisan interest of the government of the day, and this expectation of public-interest orientation is the foundation for the constitutional dimensions of the office.

In practice, however, the Attorney General of Bangladesh has functioned primarily as the government's lawyer: representing the government in constitutional challenges, defending executive actions against judicial scrutiny, and advising on the legal strategies the government employs to pursue its political objectives. The expectation of independence from partisan direction, strongly established in the constitutional traditions of the United Kingdom, Canada, and Australia, has not taken root in Bangladesh's constitutional culture.

The consequences of this capture of the Attorney General function are significant. When the government is itself the primary violator of constitutional norms, as was repeatedly the case during the AL years, an Attorney General who functions as a partisan legal operative rather than a constitutional guardian actively facilitates the constitutional violations he or she is supposed to uphold. The arguments presented by successive Attorneys General in defense of the Digital Security Act, the suspension of the Caretaker Government system, and the dilution of fundamental rights protections are among the more shameful chapters of Bangladesh's constitutional history.

9.2 The Solicitor General and the Hierarchy of Constitutional Legal Representation

The office of the Attorney General in Bangladesh is supplemented by a hierarchy of legal officers: the Additional Attorneys General, Solicitor General, Additional Solicitor General, and Deputy Attorneys General, who together constitute the Bangladesh Bar for government litigation. This hierarchy has grown enormously in size over the decades, and its expansion reflects the enormous growth in the government's litigation exposure as an increasingly active regulatory state faces judicial challenges to its actions.

The appointments within this hierarchy are made by the government and are widely regarded as patronage positions, distributed among lawyers who have demonstrated their political loyalty

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rather than their legal excellence. This patronage character of government legal appointments has had several negative consequences. It has reduced the quality of legal representation the government receives in complex constitutional cases, where sophisticated legal argument requires genuine professional excellence rather than political compliance. It has created a large class of lawyers who are financially dependent on government favour, compromising their independence and their ability to give frank legal advice. And it has corrupted the incentive structure of the legal profession more broadly, as lawyers who aspire to government appointments have an incentive to cultivate political connections rather than professional excellence.

A reformed constitutional framework for the Attorney General's office would need to address both the structural independence question, perhaps through a constitutional requirement that the Attorney General be appointed through the NCC or a similar multipartisan process, and the professional quality question, perhaps through requirements that appointees meet defined professional criteria and that their advice be privileged but not overridden by political direction.

CHAPTER TEN: THE INFORMATION COMMISSION AND THE RIGHT TO KNOW: TRANSPARENCY AS A CONSTITUTIONAL FOUNDATION OF ACCOUNTABILITY

10.1 Freedom of Information as a Fundamental Right

The right of access to information held by public authorities has been recognised as a fundamental human right in international law since at least the Universal Declaration of Human Rights of 1948, whose Article 19 protects the freedom to seek, receive, and impart information. More specifically, freedom of information laws, which create legally enforceable rights to access government documents, have been adopted by more than one hundred countries over the past several decades, reflecting a global consensus that transparency in government is a prerequisite for genuine democratic accountability.

The theoretical foundation of this consensus is straightforward: a government that keeps its decisions secret cannot be democratically accountable, because citizens cannot evaluate the performance of officials they cannot observe. Transparency is therefore not merely a matter of administrative convenience; it is a structural requirement of democratic government. Citizens who know how their government is making decisions, allocating resources, and enforcing laws are better equipped to hold it accountable through elections, civil society advocacy, and litigation. Without information, democratic accountability is formal rather than real.

In the past decade, constitutional scholars including Tom Mendel, Helen Darbishire, and Roger Vleugels have contributed to a growing literature on the constitutional status of freedom of information. Their work distinguishes between freedom of information as a legal right enforceable through ordinary legislation, and freedom of information as a constitutional right, fundamental and protected from abridgement through ordinary majority action. The trend in global constitutional development has been toward the constitutionalisation of freedom of information: its recognition not merely in ordinary legislation but in the fundamental law of the

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state. Mexico, South Africa, India, and numerous other countries have elevated freedom of information to constitutional status, either through explicit constitutional provisions or through judicial recognition of its constitutional dimensions.

10.2 The Bangladesh Right to Information Act 2009 and the Information Commission

Bangladesh enacted the Right to Information Act in 2009, one of the first significant reforms of the initial AL government. The Act gave citizens a legally enforceable right to request information from public bodies, imposed obligations on public bodies to respond within defined timeframes and to disclose information proactively, and established the Information Commission as an independent quasi-judicial body to adjudicate disputes between requesters and public bodies.

The enactment of the RTI Act was a genuinely significant development in Bangladesh's governance framework, and in its early years the Information Commission demonstrated some genuine effectiveness. It received thousands of complaints annually from citizens whose information requests had been denied or ignored, and in many cases it ordered disclosure of information that public bodies had refused to provide voluntarily. It published annual reports that provided some data on the extent of information access and refusal across the public administration.

However, the RTI Act's implementation has been characterised by a pattern that has become familiar in the examination of Bangladesh's accountability institutions: the law exists on paper with a comprehensive and apparently robust framework, but its practical implementation is limited by structural deficiencies in the Information Commission's independence, capacity, and enforcement powers.

The most fundamental structural limitation is the discretionary exemptions that the RTI Act contains. These exemptions are extraordinarily broad, covering, among other things, information relating to the security, integrity, or sovereignty of Bangladesh; information that would prejudice the prosecution of offenders or the fair trial of any person; information received in confidence from a foreign government; and information the disclosure of which would endanger the life or physical safety of any person. These exemptions, interpreted expansively by public bodies with an incentive to withhold information, effectively swallow the right. A government that wishes to refuse virtually any information request can invoke one or more of these exemptions with reasonable legal plausibility.

The Information Commission's power to enforce its disclosure orders against non-compliant public bodies has been similarly limited. While the Commission can in theory impose fines and refer cases for prosecution, the practical mechanisms for enforcement against a recalcitrant Ministry or Department are cumbersome and rarely invoked. Public bodies have learned that they can routinely deny information requests and face minimal practical consequence, even when the Information Commission subsequently orders disclosure.

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10.3 Digital Transparency and the New Frontiers of Information Rights

The past decade has seen a fundamental transformation in the nature of information held by governments and the mechanisms through which citizens can and cannot access it. The digitalisation of government records, the collection of vast datasets about citizens' behaviour and characteristics, and the emergence of digital administrative systems have created both new opportunities for transparency, through automated proactive disclosure, open data initiatives, and digital platforms for information requests, and new risks, through the concentration of sensitive information in government databases, the development of surveillance capabilities, and the weaponisation of digital systems for political control.

Bangladesh's experience with the Digital Security Act, enacted in 2018 and replaced by the Cyber Security Act in 2023, represents one of the most extreme examples of the weaponisation of digital regulation for political control. The DSA criminalised a broad range of online activities, including the publication of information deemed to "deteriorate law and order," "disturb communal harmony," or "create confusion," under penalties of up to fourteen years' imprisonment. These broad and vague provisions were applied against journalists, bloggers, activists, and ordinary citizens who published information embarrassing to the government or critical of the Prime Minister.

The constitutional reform agenda addresses the DSA legacy through a combination of the repeal of its most egregious provisions, the strengthening of press freedom protections at the constitutional level, and the recognition of digital rights as a component of the expanded fundamental rights framework. The CRC has specifically recommended the recognition of the right to internet access and digital communication as a constitutionally protected right, a recommendation that would have important implications for the constitutionality of future legislation restricting digital expression.

CHAPTER ELEVEN: MEDIA FREEDOM AND CONSTITUTIONAL ACCOUNTABILITY: THE PRESS AS THE FOURTH ESTATE

11.1 The Constitutional Theory of Press Freedom

The press, described by Edmund Burke as the "Fourth Estate" in Parliament and by Thomas Jefferson as more important to democracy than government itself, plays a constitutionally essential role in the system of accountability. Independent journalism is the mechanism through which the actions of powerful institutions, whether governmental or private, are brought to public attention and subjected to democratic scrutiny. Without a free press, the accountability institutions examined in the preceding chapters are blind: they cannot investigate what they do not know, and what they know is substantially determined by the quality and freedom of investigative journalism.

The constitutional theory of press freedom rests on two distinct but related foundations. The first is the individual right to freedom of expression, which includes the right to publish and to

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receive information, and which is a fundamental human right in all major international human rights instruments. The second is the institutional function of the press in democratic governance: the systemic role that a free and independent press plays in producing the information that citizens, civil society, and accountability institutions need to hold power to account. This institutional dimension of press freedom gives it a constitutional significance that goes beyond the individual right to expression; it makes press freedom a structural requirement of democratic government.

The Bangladesh Constitution protects freedom of expression under Article 39, which guarantees freedom of thought, conscience, and speech, and freedom of the press, subject to reasonable restrictions in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offence. The broad and vague character of these limitations has made Article 39's protection of press freedom substantially uncertain in practice, and successive governments have exploited this uncertainty to restrict journalism and expression in ways that a more principled interpretation of the constitutional guarantee would not permit.

11.2 The Destruction of Press Freedom Under the Awami League: A Constitutional Autopsy

The trajectory of press freedom in Bangladesh during the AL years of 2009 to 2024 is one of progressive deterioration, culminating in what press freedom organisations characterised as a full-scale assault on independent journalism in the final years of Hasina's government. Reporters Without Borders ranked Bangladesh 163rd out of 180 countries in its 2024 World Press Freedom Index, placing it among the least press-free countries in the world.

The mechanisms of press suppression were multiple and reinforcing. At the legislative level, the Official Secrets Act, the Digital Security Act, and various other laws created an extensive array of criminal offences that could be invoked against journalists who published information embarrassing to the government. These laws were not merely latent threats; they were actively applied. Between 2018 and 2024, hundreds of cases were filed under the DSA against journalists, editors, and bloggers. Many were arrested and held in pre-trial detention for extended periods. The deterrent effect of these prosecutions extended far beyond the individual journalists targeted; self-censorship became pervasive throughout the media industry as journalists and editors learned to avoid topics that might attract prosecution.

At the economic level, the government exercised enormous influence over the media through the allocation of official advertising. State-owned enterprises, government ministries, and private companies with government contracts spent enormous sums on advertising in Bangladeshi media. Media outlets that maintained critical editorial positions found their advertising revenue drying up as government-aligned advertisers withdrew. This economic lever was particularly effective against print media, which are especially dependent on advertising revenue and which could be driven to financial crisis by a determined advertiser boycott.

At the physical level, journalists who persisted in critical reporting faced violence, harassment, and intimidation. Enforced disappearances of journalists, while rarer than in some other authoritarian contexts, were documented. Legal harassment through civil defamation suits, in

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addition to criminal prosecution, imposed financial costs on critical journalists. The assassination in 2024 of journalist couple Sagar Sarwar and Meherun Runi, whose murders remained unsolved after more than a decade despite repeated commitments to investigation, cast a long shadow over the profession.

The Supreme Court and the High Court Division offered some protection through their constitutional rights jurisdiction, and there were cases in which courts ordered the release of journalists detained under the DSA on fundamental rights grounds. But judicial protection was inconsistent and ultimately insufficient to reverse the broader trend of press suppression.

11.3 Constitutional Reforms for Press Freedom: The Post-2024 Framework

The interim government that assumed power in August 2024 took several significant steps to reverse the suppression of press freedom. The Digital Security Act, which had been amended and renamed the Cyber Security Act in 2023 in response to international criticism but which retained most of the DSA's most problematic provisions, was subjected to further review and substantial amendment. Multiple DSA and CSA cases against journalists were withdrawn. Some journalists who had been imprisoned were released.

The Constitutional Reform Commission's proposals include the strengthening of press freedom guarantees at the constitutional level, moving the protection of press freedom from its current position as a right subject to broad legislative restriction toward a more strongly protected right with a narrower scope for legitimate limitation. The CRC has also recommended the repeal or fundamental amendment of laws, including the Official Secrets Act, that have been used to restrict journalism without adequate constitutional justification.

The July Charter's endorsement of the principle of press freedom and the February 2026 referendum's implicit approval of the reform agenda provide democratic legitimacy for these changes. But translating them into durable institutional reform requires more than legislative amendment. It requires the development of a culture of constitutionalism in which press freedom is genuinely respected by those in power, not merely formally acknowledged in legal texts.

The creation of an independent broadcasting regulator, insulated from executive direction through an NCC-style appointment process, would be a particularly significant structural reform. Bangladesh's electronic media, while formally regulated, has in practice been subject to intense political influence from successive governments, which have granted broadcasting licences as patronage tools and have pressured broadcasters through informal means. A genuinely independent broadcast regulator, empowered to grant and withdraw licences on the basis of clear legal standards rather than political relationships, would substantially improve the conditions for broadcasting freedom.

CHAPTER TWELVE: COMPARATIVE CONSTITUTIONAL PERSPECTIVES ON ACCOUNTABILITY INSTITUTIONS: LESSONS FROM GLOBAL EXPERIENCE

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12.1 South Asia's Accountability Landscape: India, Pakistan, Sri Lanka, and Nepal

The comparative constitutional analysis of accountability institutions in South Asia is particularly instructive for Bangladesh, because the countries of the region share significant constitutional inheritances from the British colonial period, face similar political-economy challenges of accountability in post-colonial democracies, and have developed different institutional responses to these challenges that offer valuable lessons for Bangladesh's reform agenda.

India provides the most complex and instructive comparative case. India's constitutional framework for accountability institutions is based primarily on the Indian Constitution itself, which establishes the Election Commission, the Comptroller and Auditor General, the Public Service Commissions, and the Attorney General in considerable detail. These institutions have had deeply varied histories. The Election Commission of India, under the leadership of T.N. Seshan in the early 1990s, transformed itself from a largely inactive constitutional body into a formidably effective accountability institution through aggressive use of the broad powers that the Constitution already gave it. Seshan's tenure demonstrated that institutional effectiveness depends critically on the character of leadership and the willingness to use existing powers aggressively, not only on the formal adequacy of the constitutional design.

India's experience with its Central Vigilance Commission and the Central Bureau of Investigation, which together constitute the primary federal anti-corruption architecture, has been far less encouraging. Both institutions have been repeatedly criticised for their susceptibility to executive direction and their use as tools of political advantage. The CBI, described by India's Supreme Court as a "caged parrot" in a 2013 judgment, operates under the supervision of the Central Vigilance Commissioner but is headed by an officer appointed by a committee that includes the Prime Minister, and has been routinely used against political opponents of the ruling party while protecting ruling-party associates.

Pakistan's constitutional history offers what might be called a cautionary tale of the extremes that accountability institution failure can reach. Pakistan's National Accountability Bureau (NAB), established in 1999 by the military government of Pervez Musharraf, was from its inception designed as a tool of political control rather than genuine accountability. It was used selectively against political opponents, while the accountability of the military itself and of military-affiliated businesses was entirely beyond its reach. Its operations during the Imran Khan government of 2018 to 2022 were widely characterised as a weaponisation of accountability for political persecution of the PTI's opponents. After Imran Khan's removal from power in 2022, he became himself the primary target of NAB investigations, completing a cycle of political instrumentalisation that illustrated the fundamental inadequacy of an accountability institution without genuine independence from political direction.

Sri Lanka's experience with the Nineteenth and Twenty-First Constitutional Amendments, examined earlier in this chapter, illustrates the vulnerability of accountability institutions to constitutional reversal. The Constitutional Council established by the Seventeenth Amendment was abolished by the Eighteenth Amendment under President Rajapaksa, demonstrating that even constitutional arrangements for institutional independence can be dismantled by a

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sufficiently determined political majority. The subsequent restoration under the Nineteenth and strengthening under the Twenty-First Amendments suggests that the cycle of reform and reversal can eventually produce a more stable framework, but the process is extraordinarily costly in terms of the institutional damage done during the reversal phase.

Nepal's post-2015 constitutional framework has included an ambitious set of constitutional commissions, established in the new Constitution of 2015 with considerable constitutional specificity about their composition and mandate. The National Human Rights Commission, the Inclusion Commission, the Women Commission, the Madhesi Commission, the Tharu Commission, and the Muslim Commission are all constitutionally established bodies. The multiplicity of commissions reflects Nepal's political context of managing deep ethnic and regional diversity, but it has also created institutional fragmentation and resource competition that have limited the effectiveness of individual commissions.

12.2 African Constitutional Models: Ghana, Kenya, and the Lessons of the New Constitutional Wave

The "new constitutionalism" that swept through Africa in the 1990s and 2000s produced some of the world's most ambitious accountability institution frameworks, driven by the experiences of post-conflict and post-authoritarian states seeking to establish new institutional foundations for democratic governance. The African constitutional experience, particularly in Ghana, Kenya, and South Africa, has been substantially studied in the comparative constitutional literature and offers important lessons for Bangladesh.

Ghana's constitution of 1992 established an impressive array of independent constitutional bodies, including the Commission on Human Rights and Administrative Justice (CHRAJ), which combines the functions of an Ombudsman, a Human Rights Commission, and an Anti-Corruption Commission in a single institution. The CHRAJ's integrated mandate, while unusual by comparative standards, has proven effective in the Ghanaian context, allowing it to address the connections between administrative injustice, human rights violations, and corruption in a coordinated way. Ghana has also developed an effective Commission on Civic Education, a National Media Commission, and an Electoral Commission, all constitutionally established and with a track record of relatively genuine independence that reflects the strength of Ghanaian democratic culture and civil society.

The Ghanaian model has been cited by constitutional scholars including Emmanuel Gyimah-Boadi and E. Gyimah-Boadi as an example of how accountability institutions can become effective when they are embedded in a broader political culture that values democratic norms, even in a context of limited economic development. Ghana's democratic consolidation, demonstrated by multiple peaceful transfers of power between the two major parties, has created a political environment in which institutional independence is more credible because the incentives for respecting it are stronger: a party that weakens accountability institutions when in power knows that it will face those weakened institutions when it goes into opposition.

Kenya's post-2010 constitutional experience has been more mixed. The 2010 Constitution established an extraordinarily ambitious framework of accountability institutions, including not

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only the independent commissions mentioned earlier but also a set of oversight bodies for specific sectors: the National Land Commission, the Commission on Administrative Justice, the Independent Offices of the Controller of Budget, the Director of Public Prosecutions, and the Auditor-General. The scale of this institutional ambition reflects both the extent of Kenya's governance failures before 2010 and the aspirations of the constitutional drafters.

The practical performance of these institutions has varied considerably. The DPP's office, under the leadership of prosecutors who have demonstrated genuine independence, has at times prosecuted high-level corruption and political violence cases with a seriousness that previous prosecutors never achieved. The Controller of Budget has produced rigorous and critical reports on budget implementation across all levels of government. But other institutions have been subject to political pressure, resource constraints, and leadership failures that have limited their effectiveness. The overall Kenyan experience suggests that the comprehensive constitutionalisation of accountability institutions creates the conditions for institutional effectiveness without guaranteeing it, and that the realisation of constitutional potential requires sustained political will and a supportive civil society environment.

12.3 The Nordic Model and Its Lessons for Bangladesh

The Nordic countries, particularly Sweden, Denmark, Finland, and Norway, have developed over centuries what scholars of comparative public administration call the "integrity system": a comprehensive network of accountability norms, institutions, and cultural expectations that make public sector corruption rare, press freedom extensive, administrative transparency routine, and governmental accountability genuine rather than nominal.

Several features of the Nordic integrity system are worth examining for their relevance to Bangladesh's reform agenda, even though the historical and cultural distance between Scandinavia and South Asia is enormous. The first is the radically different relationship between the state and citizens in terms of information access. Sweden's Freedom of the Press Act, which is one of the fundamental laws of the Swedish Constitution and which has been in force since 1766, guarantees citizens the right to access virtually all government documents. The presumption in Swedish constitutional law is in favour of disclosure: government documents are public unless they fall within specifically defined and narrowly interpreted exemption categories. This presumption creates a fundamentally different governmental culture than Bangladesh's, where the presumption is effectively the opposite.

The second feature is the combination of high public sector salaries, effective internal accountability mechanisms, and strong civil service culture that makes corruption economically irrational for most officials. In Bangladesh, low civil service salaries relative to the private sector, combined with cultural norms that treat the holding of public office as an opportunity for enrichment, create a systemic incentive structure that undermines anti-corruption institutions however well-designed they are. The reform of compensation structures and the development of a professional civil service culture are therefore essential complements to any institutional accountability reform.

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The third feature is the powerful role of civil society, including an independent press, in the Nordic accountability system. Civil society in the Nordic countries functions as a genuine "fifth estate," capable of bringing accountability claims against governments through investigative journalism, organised advocacy, and litigation, and with sufficient resources, expertise, and social standing to do so effectively. Building an equivalent civil society accountability infrastructure in Bangladesh requires long-term investment in press freedom, nonprofit organisational capacity, legal aid, and public interest litigation, areas where the reform agenda has begun but has far to go.

CHAPTER THIRTEEN: THE REFORM AGENDA: TOWARD A CONSTITUTIONALLY ROBUST ACCOUNTABILITY ARCHITECTURE FOR BANGLADESH

13.1 A Comprehensive Framework: Constitutional Entrenchment, Appointment Reform, and Operational Independence

Drawing together the analysis of the preceding chapters, this final chapter proposes a comprehensive framework for the constitutional reform of Bangladesh's accountability architecture. This framework builds on the Constitutional Reform Commission's proposals and the July Charter's commitments, but extends and deepens them in ways that address the structural deficiencies identified throughout this part.

The foundation of the framework is the principle of constitutional entrenchment. All major accountability institutions should be established at the constitutional level, with their mandates, basic structures, and independence protections specified in the Constitution rather than left to ordinary legislation. This means amending the Constitution to include specific articles for: the Anti-Corruption Commission, the National Human Rights Commission, the Information Commission, the Public Service Commission, the Comptroller and Auditor General, the Ombudsman, and the proposed National Constitutional Council. Each article should specify: the institution's mandate in clear and comprehensive terms; the composition of its governing body; the appointment process through the NCC; the security of tenure of its members, specifying exhaustive grounds for removal and requiring a supermajority in both houses for removal; the budget, to be charged directly to the consolidated fund; and its reporting obligations to Parliament.

The second element of the framework is the operationalisation of the National Constitutional Council. The NCC's design must be sufficiently specific to prevent political manipulation, and its procedures must be robust enough to manage the inevitable disagreements that will arise in a multipartisan body. Specific legislative implementing provisions should establish: the NCC's own internal procedures, including voting rules, quorum requirements, and procedures for managing deadlocks; a mandatory timeline for completing appointments; a mechanism for handling vacancy situations; and a provision for judicial review of NCC appointment decisions on grounds of procedural irregularity, though not on grounds of substantive disagreement with the merits of the appointment decision.

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The third element is the development of genuine investigative and enforcement capacity in the accountability institutions. Constitutional entrenchment and independent appointments are necessary but not sufficient. Each institution must have the human, financial, and technical resources to perform its mandate effectively. This requires: salary scales that attract qualified professionals at competitive rates; adequate operating budgets, protected from annual political manipulation; access to the technology required for modern investigative work, including forensic accounting, digital evidence analysis, and communications intelligence; and the legal powers necessary for effective investigation, including powers to compel testimony, access records, conduct searches, and preserve evidence.

The fourth element is the reform of parliamentary accountability mechanisms, particularly the Public Accounts Committee. An opposition-chaired PAC, with adequate staffing and genuine investigative powers, is essential for ensuring that audit findings translate into actual accountability. The constitutional requirement that the PAC chair be drawn from the opposition, recommended by the CRC and included in the July Charter, is a critical reform. Implementing legislation should specify the PAC's powers in detail, including the power to summon witnesses, compel document production, and make binding recommendations.

13.2 The Danger of Reform Fatigue and the Importance of Sequencing

One of the most important lessons from comparative constitutional experience is that ambitious accountability reform agendas are vulnerable to what scholars call "reform fatigue": the tendency for the political energy that drives reform to dissipate before reform is complete, leaving institutions partially reformed in ways that may be worse than the status quo because they create expectations that cannot be fulfilled.

Bangladesh's post-2024 moment has generated extraordinary political energy for reform, driven by the July uprising and its massive human cost. This energy has produced an ambitious reform agenda: eleven reform commissions, the July Charter, the referendum, and multiple ordinances. But the political context is already shifting as the elected government settles into power with different political interests than the interim government that drove the reform agenda. The danger is that the most transformative elements of the reform agenda will be delayed, diluted, or reversed before they are implemented.

Managing this risk requires strategic sequencing: prioritising those reforms that are most transformative and most vulnerable to reversal, and implementing them in ways that create vested interests in their continuation. The constitutional entrenchment of accountability institutions through constitutional amendment is the highest priority because it is the hardest to reverse: once written into the Constitution, removing these provisions requires the two-thirds majority in both houses that the reform proposals would require. The NCC's establishment and operationalisation is the second priority, because once in place it creates an institutional stakeholder community, including the opposition leaders and other NCC members, with a direct interest in maintaining the NCC's function.

The BNP government's current reluctance to convene the Constitution Reform Council, as reported in March and April 2026, is the most immediate threat to this sequencing strategy. If the

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Constitution Reform Council is not convened within the timeline specified by the July Charter, the constitutional amendments that would give permanent force to the accountability reforms will not be enacted within the 180-day window. The passage of time weakens the sense of urgency that drives reform, allows political opposition to organise, and creates facts on the ground that make reform more difficult to implement.

Civil society organisations, the international community, and the political parties that signed the July Charter all have roles to play in maintaining the pressure for implementation. The experience of comparable post-crisis constitutional reform processes, from Kenya in 2010 to South Africa in 1994, suggests that sustained civil society engagement is essential for translating constitutional commitments into institutional reality.

13.3 The Culture of Constitutionalism: Beyond Formal Institutions

The analysis throughout this part has repeatedly returned to a theme that goes beyond institutional design: the importance of a culture of constitutionalism, a set of shared values, expectations, and norms that make constitutional institutions genuinely authoritative rather than merely formally specified. The most brilliantly designed accountability institution cannot function if the political culture does not regard it as legitimate, if the officials it investigates do not treat its authority as binding, and if the public does not understand or value its function.

Building a culture of constitutionalism in Bangladesh requires a sustained investment in several areas. Constitutional education, at all levels from primary school through professional legal training, is essential for creating a citizenry that understands and values constitutional rights and institutions. The revision of school curricula to include meaningful civic education, the development of public constitutional literacy programmes, and the reform of legal education to produce professionals who regard constitutional accountability as a genuine professional commitment rather than a technical specialisation are all necessary elements.

The role of civil society, including the press, academic institutions, professional associations, and advocacy organisations, in building constitutional culture cannot be overemphasised. Civil society actors are the primary mechanism through which constitutional norms are enforced in the space between formal legal proceedings and ordinary political competition. When a journalist investigates a corruption allegation, when a law professor writes a critical commentary on a government's constitutional violation, when a civil society organisation files a public interest petition, or when an advocacy group campaigns for the appointment of a qualified and independent accountability commissioner, they are performing the cultural work of constitutionalism.

The July 2024 uprising itself was, in a profound sense, an act of constitutional culture. Students and citizens who took to the streets did not merely protest specific policies; they demanded constitutional accountability, judicial independence, and an end to the impunity that had characterised political power in Bangladesh for a generation. This demand was the expression of a constitutional culture that, however fragile and contested, has genuine roots in Bangladeshi civil society. Nurturing those roots, translating them into durable institutional arrangements, and

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protecting them against the inevitable attempts by powerful interests to suppress them: this is the deepest challenge of Bangladesh's constitutional moment.

13.4 International Dimensions: Global Standards, Foreign Assistance, and the Politics of Reform Support

No examination of Bangladesh's accountability reform agenda is complete without addressing its international dimensions. Bangladesh's constitutional reform process has attracted significant international attention, both because of the dramatic circumstances that produced it and because of the scale of the institutional changes proposed. International actors, including the United Nations, the European Union, the United States, the United Kingdom, and various international civil society organisations, have been engaged with the reform process in various ways.

International engagement has both supportive and complicating dimensions. On the supportive side, international organisations have provided technical assistance, expertise in constitutional design, and financial support for reform commission activities. The International IDEA's detailed analysis of the July Charter and its reform proposals has been particularly valuable in providing comparative constitutional expertise to the Bangladeshi reform process. The UN's human rights mechanisms have continued to monitor Bangladesh's compliance with international human rights standards and to recommend specific reforms.

On the complicating side, international engagement in domestic constitutional processes always raises sovereignty concerns and can be exploited by political actors who wish to delegitimise reform proposals by characterising them as foreign impositions. The fact that Ali Riaz, the Chair of the Constitutional Reform Commission, is based at an American university was seized upon by some critics to suggest that the reform proposals reflected foreign influence rather than Bangladeshi constitutional values, a characterisation that is both factually inaccurate and intellectually dishonest but politically potent.

The most effective international support for Bangladesh's accountability reform agenda is likely to come not through direct engagement in the constitutional drafting process but through several complementary mechanisms: bilateral and multilateral asset recovery assistance, helping Bangladesh trace and recover the corrupt proceeds that were moved offshore during the AL years; capacity building support for specific accountability institutions, providing training, technology, and institutional expertise; and conditionality, through which international financial assistance is linked to verifiable progress on specific accountability reforms.

The asset recovery dimension is particularly important, both for its intrinsic accountability value and for its political symbolism. If Bangladesh succeeds in recovering significant assets from abroad, it would demonstrate the practical benefits of the accountability reform agenda and create political incentives for implementing reforms that make future asset recovery easier.

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13.5 The Special Problem of the Security Sector: Accountability for the Police, Military, and Intelligence Services

Any comprehensive examination of constitutional accountability in Bangladesh must confront the profound accountability deficit in the security sector. The Bangladesh Police, the Rapid Action Battalion, the military, and the intelligence services have operated with very limited accountability throughout Bangladesh's history, and their role in the repression that culminated in the July 2024 uprising, in which more than eight hundred people were killed by security forces, demands urgent constitutional attention.

The killing of civilians by security forces is the most extreme form of state accountability failure. When the state kills its own citizens to suppress political protest, constitutional accountability has collapsed entirely. The July 2024 killings have given rise to criminal investigations against senior AL officials, police commanders, and RAB officers under both Bangladeshi law and international human rights law. The International Criminal Court has received communications alleging crimes against humanity in connection with the killings. Several countries have imposed sanctions on individuals identified as responsible.

But the accountability response to the July killings, while necessary, is insufficient by itself. What is required is the structural reform of security sector accountability to prevent the recurrence of security force killings in future political crises. This requires several elements: the constitutional entrenchment of the prohibition on the use of lethal force against peaceful protesters; the creation of a genuinely independent police oversight commission, with the power to investigate complaints against police, the authority to discipline officers found to have violated the law, and the independence from political direction that the existing police complaints mechanism entirely lacks; the reform of the Rapid Action Battalion, whose extrajudicial methods have been documented by human rights organisations over many years; and the strengthening of military accountability through clear constitutional provisions governing the conditions under which military force may be used domestically and the mechanisms through which military conduct is subject to civilian oversight.

The post-2024 reform commissions produced a report on the police specifically, recommending the creation of an independent National Police Commission to oversee the police service. The July Charter includes a reference to the "national police commission" as one of the constitutional bodies to be constituted through the new multipartisan process. These proposals are an important beginning, but the constitutional and legislative detail required to give them operational meaning remains to be worked out.

The military accountability question is more politically sensitive. The Bangladesh Army's historical role in the country's politics, its involvement in the coups of 1975 and 1982, and its quiet influence on political outcomes since the restoration of democracy in 1991 make the constitutional definition of civil-military relations a delicate but essential element of any genuine accountability reform. Constitutional provisions specifying the conditions under which the military may be called to aid civil power, establishing civilian oversight mechanisms for military operations, and affirming the subordination of the military to civilian constitutional authority, are

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necessary elements of a comprehensive accountability framework that the reform proposals have not yet fully developed.

CHAPTER FOURTEEN: THE THEORY OF CONSTITUTIONAL TRANSFORMATION: ACCOUNTABILITY REFORM AS A RESPONSE TO CONSTITUTIONAL CRISIS

14.1 Constitutional Crisis Theory and the Bangladesh Experience

The concept of constitutional crisis, as distinct from ordinary political conflict, has been explored extensively in the comparative constitutional literature in recent years, and Bangladesh's experience illuminates the analytical framework in important ways.

Mark Tushnet, one of the leading scholars of comparative constitutional law, has defined a constitutional crisis as a situation in which the normal mechanisms of constitutional governance cannot produce a resolution that the major political actors accept as legitimate. By this definition, Bangladesh has experienced multiple constitutional crises over its history: the coups of 1975 and 1982, the political standoff of 2006 to 2008, and the July 2024 uprising that ended the AL government. Each crisis was produced by the failure of accountability mechanisms: the lack of genuine electoral accountability, the absence of meaningful constraints on executive power, and the systematic subversion of the independent institutions that should have provided the checks and balances necessary for constitutional governance.

The July 2024 uprising is distinctive among these crises in its character as a crisis of legitimacy rather than merely a crisis of governance. Previous crises produced military interventions that, while constitutionally illegitimate, at least resolved the immediate political impasse. The July uprising, led by students and joined by broad swathes of the population, expressed a demand not merely for a change of government but for a fundamental transformation of the constitutional order. The demand for accountability, for an end to impunity, for genuinely independent institutions, and for a constitution that functions as a real constraint on power rather than a rhetorical disguise for executive dominance: this demand constitutes a mandate for constitutional transformation that goes beyond the immediate political transition.

14.2 Post-Crisis Constitutionalism: The Challenge of Translating Crisis Momentum into Durable Reform

The literature on post-crisis constitutionalism, developed by scholars including Ran Hirschl, Tom Ginsburg, and Aziz Huq, examines the conditions under which constitutional moments, periods of heightened constitutional consciousness produced by political crisis, translate into durable institutional reform rather than returning to the status quo ante.

Several factors appear to determine the durability of post-crisis constitutional change. First, the depth of institutional change matters. Reforms that are merely formal, changing the text of the

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constitution without changing the underlying institutional relationships and political incentives, are fragile. Reforms that change the fundamental architecture of power: redistributing authority, creating new accountability mechanisms with genuine independence, and altering the political economy of governance, are more durable because they create vested interests in their continuation.

Second, the breadth of political coalition supporting the reforms matters. Reforms implemented by a narrow political faction, even one with a democratic mandate, are more vulnerable to reversal when power changes hands. Reforms that command genuine multipartisan support, or that are implemented through processes that give all major political actors a stake in the outcome, are more likely to survive the transition between governments.

Third, the engagement of civil society matters. Reforms that are supported by organised civil society constituencies, including professional associations, advocacy organisations, academic institutions, and media, develop a social constituency that creates political costs for reversal. Reforms implemented without civil society engagement remain dependent on the political will of whoever happens to hold power.

Bangladesh's post-2024 reform process scores reasonably well on the first criterion: the reforms proposed are genuinely structural rather than merely formal. It scores more weakly on the second criterion: the AL's exclusion from the July Charter negotiating process means that the country's largest political party, whatever its current weakened state, did not participate in endorsing the reform framework. This creates a vulnerability: if the AL eventually returns to political relevance, it has no commitment to the July Charter's accountability architecture. On the third criterion, the engagement of civil society in the reform process has been significant but uneven, with strong engagement from student and youth organisations but weaker engagement from some professional communities and civil society organisations outside the major cities.

14.3 The Constitutional Moment and Its Passage: Urgency of Implementation

Constitutional moments are by definition temporary. The heightened constitutional consciousness produced by the July 2024 uprising, and the political energy for reform that it generated, cannot be sustained indefinitely. The February 2026 elections and the formation of a new government mark the beginning of a normalisation process in which the extraordinary political conditions of the transitional period give way to the ordinary politics of democratic governance. As the period of crisis recedes in memory, the political incentives that drove the demand for accountability reform become weaker, and the political incentives that have historically driven resistance to accountability reform become stronger.

This makes the next period, the 180-day window specified by the July Charter for the Constitution Reform Council to complete its work, critically important. Every day that passes without the convening of the Constitution Reform Council is a day in which the momentum for constitutional accountability reform dissipates. The BNP government's reported reluctance to move forward with this process, as documented in March 2026, represents a potentially historic failure: the squandering of Bangladesh's most significant constitutional moment since 1972.

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Civil society organisations, the academic community, the international human rights community, and the political parties that signed the July Charter must collectively insist on the implementation of the reform agenda within the specified timeline. This insistence is itself a form of constitutional accountability: holding the new government to the commitments it made, and that the Bangladeshi people endorsed in the February 2026 referendum, by exercising the democratic accountability mechanisms that a free press, organised civil society, and independent courts make possible.

14.4 Accountability Institutions and the Future of Constitutional Democracy in Bangladesh

The examination throughout this part leads to a conclusion that is both sobering and, in a qualified way, hopeful. Sobering because the structural challenges that have produced Bangladesh's accountability deficit are deep-rooted, politically entrenched, and historically persistent. The capture of accountability institutions by the executive, the subordination of professional independence to partisan loyalty, the concentration of power in the hands of whoever commands a legislative majority: these are not new problems, and they will not be solved by a single constitutional reform cycle, however ambitious.

Hopeful because, for the first time in Bangladesh's history, there exists a serious, comprehensive, internationally supported, and democratically endorsed reform agenda that is specifically designed to address these structural challenges. The Constitutional Reform Commission's proposals, the July Charter, the February 2026 referendum mandate, and the detailed comparative constitutional analysis that has informed the reform process: all of these represent a qualitative advance in Bangladesh's constitutional thinking that, if translated into institutional reality, could transform the accountability architecture in ways that previous reform cycles never attempted.

The Bangladeshi people, through the July 2024 uprising and the February 2026 referendum, have expressed their will for a different kind of constitutional order: one in which power is genuinely accountable, institutions are genuinely independent, and the law applies equally to those in power and those without it. Translating that expressed will into durable institutional reality is the task of the current constitutional moment. It requires not only the specific reforms examined in this part, but the sustained political will, civic engagement, and constitutional culture without which even the best-designed institutions cannot fulfill their promise.

The analysis of individual accountability institutions: the Anti-Corruption Commission, the Election Commission, the Human Rights Commission, the Public Service Commission, the Comptroller and Auditor General, the Ombudsman, the Information Commission, and the proposed National Constitutional Council, has revealed a common pattern: formal adequacy combined with structural weakness, producing institutions that appear to provide accountability but actually provide legitimating cover for its absence. Addressing this pattern comprehensively, systematically, and permanently is the central challenge of Bangladesh's constitutional moment.

The chapters that follow in subsequent parts of this textbook will examine additional dimensions of Bangladesh's constitutional transformation: the economics of constitutional governance, the relationship between constitutional law and international norms, and the theory of democratic

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consolidation in post-crisis contexts. Throughout these examinations, the theme of accountability will recur, because accountability is not merely a feature of specific institutions but the foundational requirement of all constitutional governance. A constitution that does not produce genuine accountability for the exercise of power is not, in any meaningful sense, constitutionalism at all. It is the performance of constitutionalism while power remains unaccountable.

Bangladesh's constitutional moment offers the rare opportunity to make the performance real. The question is whether the political will exists to seize that opportunity before it passes.

SELECTED BIBLIOGRAPHY AND FURTHER READING FOR PART NINE

The following works are recommended for students who wish to develop a deeper understanding of the themes examined in this part. They are drawn from the fields of constitutional law, comparative politics, public administration, international human rights law, and the emerging field of accountability studies.

On the theory of accountability institutions, the foundational texts include Khaitan's work on guardian institutions and the anti-cartelisation function of constitutional bodies, Bruce Ackerman's "The New Separation of Powers" in the Harvard Law Review, and Thomas Ginsburg and Aziz Huq's "How to Save a Constitutional Democracy," which examines the mechanisms of democratic backsliding and the institutional responses that can prevent or reverse it. Richard Mulgan's "Holding Power to Account" provides a comprehensive theoretical framework for understanding accountability in democratic systems that is essential reading for students approaching this field.

On South Asian constitutional accountability, Sudhir Krishnaswamy's "Democracy and Constitutionalism in India" provides essential background on the Indian constitutional model. Hamid Khan's "Constitutional and Political History of Pakistan" offers a comprehensive account of Pakistan's institutional failures. Nadeeja Karunaratne's work on Sri Lanka's Constitutional Council developments provides important comparative context for the NCC discussions.

On Bangladesh specifically, the Constitutional Reform Commission's final report of January 2025 is essential primary source material. Ali Riaz and Kulsoom Zafar's edited volume on Bangladesh's constitutional challenges, and the numerous analyses published in the Dhaka Law Review, the University of Asia Pacific Law Journal, and on the ConstitutionNet platform throughout 2024, 2025, and 2026 provide detailed contemporary analysis. International IDEA's primer on the July Charter by Muhammad Ekramul Haque and Sumit Bisarya is particularly valuable for understanding the international constitutional law dimensions of the reform process.

On the theory of post-crisis constitutionalism, Ran Hirschl's "Comparative Matters" provides the methodological framework for comparative constitutional analysis. Tom Ginsburg's "Judicial Review in New Democracies" examines the role of constitutional courts in new democracies in ways that are directly relevant to Bangladesh's reform challenges. Kim Lane Scheppele's work

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on the "autocratic legalism" that characterised the Hasina government's approach to constitutional manipulation is valuable for understanding the specific pathology that Bangladesh's reforms must address.

On anti-corruption theory and comparative practice, Robert Klitgaard's foundational work on corruption as a principal-agent problem, Mark Philip's philosophical analysis of political corruption, and Michael Johnston's "Syndromes of Corruption" provide essential theoretical context. The comparative analysis of anti-corruption commissions by Bertrand de Speville and by Tim Lindsey and Hannah Leitner on various Asian models provides practical comparative material.

On freedom of information and accountability, Robert Hazell's work on freedom of information in parliamentary systems, Tom Mendel's global survey of freedom of information legislation, and the annual reports of UNESCO's World Trends in Freedom of Expression and Media Development provide essential empirical and comparative material.

End of Part Nine

The Author, S M Nazmuz Sakib, is a legal scholar and constitutional theorist specialising in South Asian constitutional law and democratic governance. This textbook is dedicated to the students, activists, and martyrs of the July 2024 uprising, whose courage and sacrifice created Bangladesh's most significant constitutional moment since independence.

PART TEN

THE LIMITS OF CONSTITUTIONAL CHANGE: AMENDMENT POWER, UNAMENDABILITY, THE BASIC STRUCTURE DOCTRINE, AND THE PARADOX OF POPULAR SOVEREIGNTY IN BANGLADESH

PREFACE TO PART TEN

There is a moment in the life of every constitution when the question of how it can be changed becomes more urgent than the question of what it says. That moment arrives whenever a political community confronts the accumulated failures of its existing constitutional order and asks whether those failures can be addressed through the ordinary mechanisms of constitutional amendment, or whether they have become so entrenched that only a more radical act of constitutional reconstruction will suffice. Bangladesh is living through precisely such a moment

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right now, in the spring of 2026, and the debate it is conducting about constitutional amendment, unamendability, popular sovereignty, and the limits of constitutional change is one of the most intellectually rich and politically consequential in the country's history.

The controversy is immediate and concrete. The July National Charter of 2025, endorsed by twenty-four political parties and approved by sixty-one percent of voters in the February 2026 referendum, contains over eighty reform proposals, roughly half of which require direct constitutional amendment. The Charter's implementation framework, set out in the July National Charter (Constitutional Amendment) Implementation Order issued by the President in November 2025, contemplated that a Constitution Reform Council composed of the newly elected members of parliament would complete the constitutional amendments within 180 working days of its first session. Yet by April 2026, the BNP government had declined to convene the Reform Council, arguing that constitutional changes must proceed through the ordinary amendment procedure of Article 142 rather than through a parallel constitutional body created by presidential order. Opposition parties, led by Jamaat-e-Islami and the National Citizen Party, boycotted parliament in protest, arguing that the referendum mandate could not be reduced to ordinary legislative procedure. And hovering over the entire debate is the spectre of Article 7B, the extraordinary "eternal clause" inserted into the Constitution by the Fifteenth Amendment in 2011, which declares a substantial portion of the constitutional text unamendable by any means whatsoever.

The questions raised by this debate are not merely procedural. They go to the philosophical foundations of constitutional government itself: what is the source of constitutional authority, can a people assembled in democratic majority bind themselves absolutely against future change, how should the courts navigate the tension between constitutional text and popular democratic will, and what becomes of a constitution when the mechanisms it provides for its own revision are inadequate to the scale of change that democratic legitimacy demands? These are the questions that have occupied some of the greatest minds in constitutional theory, from Sieyès and Madison through Schmitt and Kelsen to the contemporary scholarship of Yaniv Roznai, Richard Albert, and Rosalind Dixon. Bangladesh's current constitutional moment forces these questions out of the seminar room and into the streets, courts, and parliament of a country where their resolution will determine whether a historic democratic uprising produces lasting constitutional transformation or yet another cycle of promise and disappointment.

This part examines the theory and practice of constitutional amendment in Bangladesh across five decades of turbulent constitutional history. It begins with the foundational philosophy of amendment power: what is the constitutional theory of change, and what limits, if any, govern the power of democratic majorities to alter the fundamental law? It then traces the history of constitutional amendment in Bangladesh, examining each of the seventeen amendments to the constitution and the lessons they teach about the relationship between formal constitutional change and underlying political power. It devotes extended attention to the basic structure doctrine in its Bangladeshi form, from its judicial origins in the Eighth Amendment case through its constitutional codification in Article 7B and its subsequent judicial fate in the Asaduzzaman case. It examines the Article 7B problem as a constitutional design failure of the first order: the attempt by the AL government to entrench its own constitutional innovations in permanently unamendable form, and the paradoxes this attempt has created for the post-2024 reform agenda. And it concludes with a comprehensive analysis of the constitutional reform roadblock of 2026,

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examining the competing constitutional theories invoked by the BNP and its opponents and the prospects for a resolution that is both constitutionally legitimate and politically durable.

Throughout, the analysis engages with the most recent scholarship in comparative constitutional law, which has substantially enriched our understanding of constitutional amendment, unamendability, and constitutional transformation over the past decade. The work of Roznai on unconstitutional constitutional amendments, Albert on constitutional handcuffs, and Dixon and Landau on abusive constitutionalism provide essential analytical tools for understanding Bangladesh's current predicament, and their application to the specific Bangladeshi context yields insights that neither purely doctrinal nor purely political analysis can achieve.

CHAPTER ONE: THE PHILOSOPHY OF CONSTITUTIONAL AMENDMENT: WHY CONSTITUTIONS MUST CHANGE AND WHY CHANGE MUST BE LIMITED

1.1 The Paradox of Constituent Power: Making Law That Binds Law-Makers

The theory of constitutional amendment begins with a paradox that has fascinated constitutional theorists since the earliest days of written constitutionalism. A constitution, by definition, is the supreme law of a political community: the fundamental framework within which all other laws are made and all governmental authority is exercised. It derives its authority from its status as the expression of the constituent power of the people, the sovereign political will of the community that brought the constitutional order into being. Yet the people who enacted the constitution cannot bind all future generations forever to their specific choices. A constitution that admits no possibility of change, that locks in the preferences of its founders with absolute rigidity, would become increasingly ill-suited to the social, economic, and political realities of successive generations, and would eventually collapse under the weight of its own obsolescence.

The founders of constitutional systems have generally recognized this tension and have sought to resolve it through the institution of formal amendment procedures: mechanisms that allow the constitutional text to be altered, but only through processes that are more demanding than ordinary legislation, thereby preserving the constitutional order's claim to fundamental authority while allowing necessary adaptation. The amendment procedure is the constitutional system's mechanism for managing the tension between stability and change, between the continuity that gives constitutional authority its meaning and the adaptability that prevents constitutional obsolescence.

Emmanuel Joseph Sieyès, the French revolutionary theorist who is perhaps the most important theorist of constituent power, articulated the foundational distinction between constituent power and constituted power. The constituent power, pouvoir constituant, is the original sovereign power of the people to establish a constitutional order from scratch. The constituted powers, pouvoirs constitués, are the institutions and authorities that the constitution creates: the legislature, the executive, the judiciary. The crucial insight is that the constituted powers are creatures of the constitution and cannot, as a matter of constitutional theory, exceed the authority the constitution grants them. A legislature that amends the constitution is, in the Sieyèsian

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framework, exercising a delegated constitutional authority, not the original constituent power. It can therefore make changes only within the limits that the original constituent power set, even if those limits are not explicitly stated in the constitutional text.

This distinction has enormous practical consequences. If amendment is merely an exercise of constituted power, then the amendment power is inherently limited: it cannot destroy the foundations of the constitutional order, even if the formal amendment procedure appears to permit it. The legislature cannot, through the amendment procedure, abolish constitutional supremacy itself, because constitutional supremacy is the very basis of the amendment procedure's authority. It cannot abolish the separation of powers, because the separation of powers is one of the fundamental choices of the original constituent power that gave the amendment power its authority. In the Sieyèsian framework, such acts would not be amendments at all; they would be acts of constitutional destruction, which could only be justified, if at all, by a fresh exercise of original constituent power rather than by the exercise of derivative amendment power.

Carl Schmitt's contribution to this debate, developed in his Constitutional Theory of 1928, was to sharpen the distinction between ordinary constitutional revision and what he called constitutional destruction, or Verfassungsvernichtung. For Schmitt, a constitution embodies the fundamental political decisions of a people, the choices that define the character of the political community itself. A genuine constitutional amendment alters specific provisions of the constitutional text while leaving the fundamental political decisions intact. Constitutional destruction, by contrast, replaces the fundamental political decisions themselves, creating a new constitutional order rather than modifying an existing one. Schmitt's framework helps to explain why certain changes that are formally presented as amendments are, in their substance, something more radical: acts of constitutional revolution dressed in the procedural language of reform.

Hans Kelsen's positivist jurisprudence offers a contrasting perspective. For Kelsen, the validity of constitutional provisions is a function of their derivation from a basic norm, the Grundnorm, which is itself a juristic presupposition rather than a substantive political commitment. On this view, a validly enacted constitutional amendment is simply valid: there is no higher standard of substantive constitutionality against which it can be measured. The Kelsenian framework has difficulty accommodating the basic structure doctrine and similar doctrines of constitutional unamendability, because they purport to find limits on the amendment power that go beyond the formal requirements of the amendment procedure. From a Kelsenian perspective, the Supreme Court of Bangladesh's claim in the Anwar Hossain case that certain features of the constitution cannot be amended is either a misidentification of what the Grundnorm requires or a claim that the court is itself exercising constituent power, which would be a remarkable assertion of judicial supremacy.

The contemporary scholarship on constitutional amendment has moved substantially beyond the classic positivist-natural law debate toward a more nuanced, empirically grounded analysis that takes seriously both the formal requirements of amendment procedures and the substantive constitutional values that animate them. Yaniv Roznai's pathbreaking work, Unconstitutional Constitutional Amendments, published by Oxford University Press in 2017 and extensively cited in subsequent scholarship, provides the most systematic analytical framework for thinking about

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the limits of amendment power. Roznai distinguishes between explicit and implicit limits on amendment power: explicit limits are found in formal unamendability clauses that designate specific provisions as beyond the amendment power; implicit limits, which are the subject of the basic structure doctrine, derive from the nature of constitutional government itself and protect certain foundational features of the constitutional order against amendment even in the absence of explicit text. Richard Albert's Constitutional Amendments of 2019 extends this analysis by examining what he calls "constitutional handcuffs," provisions that purport to make certain features of the constitution permanently unamendable, and exploring the theoretical justifications and practical limitations of such self-binding devices.

1.2 The Justification for Constitutional Unamendability: Democratic Theory and Its Limits

The idea that some features of a constitution should be absolutely unamendable is deeply counterintuitive from a democratic standpoint. If the constitution derives its authority from the democratic will of the people, how can any feature of it be placed beyond the reach of democratic majorities, even supermajorities? Is not the claim that certain constitutional provisions are unamendable simply an assertion that the preferences of one generation of constitution-makers are permanently superior to the preferences of all subsequent generations?

Several theoretical justifications for constitutional unamendability have been advanced, and they deserve systematic examination because they are directly relevant to the debate about Article 7B of Bangladesh's constitution.

The most compelling justification, associated with Jon Elster's work on constitutional pre-commitment and with the broader tradition of liberal constitutionalism, is the pre-commitment argument. The idea is that constitutional unamendability serves a function analogous to the function of Ulysses tying himself to the mast: it allows a political community to make a binding commitment to certain fundamental values, insulating those values against the pressure of temporary political passions or the self-interested manipulation of those who hold power at any given moment. Just as the Ulysses-at-the-mast story illustrates the rationality of self-binding as a device for resisting temptation, constitutional unamendability can be understood as a device for resisting the temptation to abandon foundational democratic commitments in moments of political crisis or majoritarian excess.

This justification has genuine force. Democratic constitutions protect minority rights, judicial independence, free speech, and other foundational values precisely because they anticipate that democratic majorities may, at moments of heightened passion or political manipulation, wish to violate these values. The constitutional protection of these values against simple majority override is one of the defining features of liberal constitutionalism, and the strengthening of that protection through formal unamendability is a logical extension of the constitutional protection idea. If constitutional rights can be overridden by a supermajority that happens to control the amendment procedure, then the protection they offer is significantly weaker than if they are genuinely entrenched against any amendment.

The second justification is what might be called the anti-abusive-constitutionalism argument, developed in the work of David Landau and Rosalind Dixon on abusive constitutionalism.

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Abusive constitutionalism, as they define it, refers to the use of formally constitutional mechanisms, including the formal amendment power, to undermine the substance of democratic governance. The classic case is the use of a parliamentary supermajority to amend the constitution in ways that entrench the ruling party in power, weaken opposition parties, eliminate independent oversight institutions, or otherwise subvert the conditions necessary for genuine democratic competition. Constitutional unamendability can serve as a defence against abusive constitutionalism by placing the most critical democratic provisions beyond the reach of even a constitutional supermajority that might be tempted to abuse them.

The third justification is the identity argument: certain features of a constitution are constitutive of the political community's identity, and their alteration would amount to the destruction of the community rather than its self-governance. On this view, the parliamentary democracy established in 1972, the commitment to the rule of law, the protection of fundamental rights: these are not merely institutional choices that the political community can revise as circumstances change. They are defining features of what Bangladesh is as a political community. To amend them out of existence would not be a self-governing act of the Bangladeshi people but a betrayal of the foundational commitments that constituted Bangladesh as a polity.

These justifications for unamendability are powerful, but they have important limits that have been forcefully articulated by their critics. The primary objection is what Albert calls the dead-hand problem: if constitution-makers can bind all future generations to their specific institutional choices, they are imposing their will on people who had no voice in making those choices. The pre-commitment argument works only if the pre-commitment genuinely serves the interests of future generations rather than entrenching the specific institutional preferences of the founding generation. If the founders made constitutional mistakes, and all founding generations do make constitutional mistakes, unamendability prevents those mistakes from being corrected.

This objection has direct relevance to Bangladesh. The Article 7B entrenchment was not the work of the founding generation of 1972. It was the work of the Fifteenth Amendment of 2011, enacted by the Awami League government with its three-quarter parliamentary majority, and it entrenched not the foundational choices of the liberation war generation but the specific institutional innovations of the AL's second government. The claim that these innovations represent the true basic structure of Bangladesh's constitution, beyond the power of any future democratic majority to alter, is both jurisprudentially contestable and politically self-serving. The very features that the July Charter most urgently needs to change, including the abolition of the caretaker government system, are precisely the features that Article 7B purports to protect from amendment.

1.3 Constituent Power, Democratic Legitimacy, and the Limits of Textual Authority

The post-2024 constitutional reform debate in Bangladesh has forced a confrontation with a question that constitutional theory has never definitively resolved: what happens when the amendment procedures specified in an existing constitution are inadequate to the scale of constitutional change that democratic legitimacy demands?

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The interim government's defence of the referendum as a legitimate mechanism for constitutional reform beyond the limits of Article 7B invoked the doctrine of constituent power in its original Sieyèsian sense. The argument was that the July 2024 uprising represented an exercise of primary constituent power, the sovereign will of the Bangladeshi people acting outside the existing constitutional framework to demand a new constitutional order. On this theory, the referendum was not an exercise of the amendment power provided by Article 142 but an invocation of the people's original sovereignty, which is prior to and superior to any specific constitutional text.

This argument has a long pedigree in revolutionary and post-revolutionary constitutional theory. The Sieyèsian constituent power doctrine was designed precisely to justify the legitimacy of constitutional revolution: the replacement of one constitutional order by another through an appeal to the people's fundamental sovereignty rather than through the formal amendment procedures of the existing order. The American Founders invoked a similar logic when they submitted the proposed Constitution to ratifying conventions rather than to the Continental Congress, bypassing the amendment procedure of the Articles of Confederation that would have required unanimous state consent.

But the invocation of constituent power as a basis for bypassing existing constitutional procedures is also extremely dangerous, and its critics have been as numerous and as forceful as its defenders. The problem is that "the people" do not speak with a single voice; democratic majorities are constructed through political processes that can be manipulated, and the claim that a particular majority represents the authentic sovereign will of "the people" is almost always contested by significant minorities who had different preferences. Schmitt himself, the most systematic theorist of constituent power, was associated with authoritarian politics precisely because his framework provided a theoretical justification for strong leaders who claimed to embody the authentic will of the people against the messy compromises of ordinary democratic politics. The invocation of "popular sovereignty" against constitutional procedures has been used to justify not only genuine democratic revolutions but also coups, authoritarian seizures of power, and the dismantling of constitutional rights.

The February 2026 referendum in Bangladesh illustrates this tension. Sixty-one percent of voters endorsed the reform package, which is a significant democratic mandate. But thirty-nine percent did not, and the referendum question itself was structured in such a way that voters could not distinguish between the different proposals it contained. As Sara Hossain noted in her March 2026 analysis for International IDEA, the ballot paper asked voters to respond to all four reform questions together, without the ability to approve some while rejecting others. This bundling of multiple distinct proposals in a single referendum question substantially compromised the democratic legitimacy of the result as an expression of voter preferences on specific constitutional changes.

Moreover, the Bangladesh Awami League, which was the primary target of the post-2024 accountability agenda, did not participate in the election or the referendum, meaning that perhaps a quarter of the electorate with AL sympathies was effectively excluded from the process. A constitutional reform process that produces a sixty-one percent endorsement from a reduced electorate with the largest opposition party excluded from participation does not represent the

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universal constituent power of the Bangladeshi people in any strong sense. It represents the preferences of the particular coalition that was able to participate in the 2026 electoral process, which is a different and weaker claim.

These complications do not necessarily invalidate the reform mandate, but they do complicate the claim that the referendum represents an exercise of original constituent power that supersedes the existing constitutional order. The more modest and constitutionally sustainable argument is that the referendum expresses a strong democratic mandate for constitutional reform that the new parliament is obligated to implement through the amendment procedures of Article 142, and that the implementation of this mandate, including changes to provisions protected by Article 7B, requires a fresh democratic judgment about whether the Article 7B protections themselves should be removed before other amendments are made.

CHAPTER TWO: THE SEVENTEEN AMENDMENTS: A CONSTITUTIONAL HISTORY OF SYSTEMATIC SUBVERSION

2.1 The Original Constitution of 1972 and Its Amendment Architecture

The Constitution of Bangladesh, brought into force on December 16, 1972, was a document of remarkable democratic ambition. It established a parliamentary system of government, guaranteed a comprehensive list of fundamental rights, enshrined four foundational principles of nationalism, socialism, democracy, and secularism, and created a judiciary with the power to enforce constitutional rights against the government. Its amendment procedure, set out in Article 142, required a two-thirds majority of all members of parliament, creating a significant barrier to constitutional change and reflecting the framers' intention that the constitution be a stable fundamental law rather than a document that could be rewritten by ordinary parliamentary majorities.

This amendment architecture was designed with admirable constitutional logic. The two-thirds requirement was high enough to prevent simple partisan majorities from rewriting the constitution to suit their political advantage, but low enough to allow the constitution to be adapted to changing circumstances when genuinely broad political consensus supported change. The drafters were drawing on international constitutional experience and appear to have been aware of the risks of both excessive rigidity and excessive flexibility. They sought a middle path.

What they did not anticipate, and perhaps could not have anticipated given the political circumstances of 1972, was the speed with which that amendment architecture would be bypassed, exploited, and subverted by governments that commanded or manufactured the two-thirds majority required to amend the constitution at will. The history of Bangladesh's seventeen constitutional amendments is, in substantial part, a history of constitutional manipulation by governments that used the formal amendment procedure to consolidate power, eliminate opposition, and rewrite the constitutional order in their own image while maintaining the procedural appearance of constitutional legitimacy.

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2.2 The First Amendment: Closing the War Crimes Tribunal Gap

The Constitution (First Amendment) Act of 1973 amended Article 47 to add a new clause, clause (3), permitting the detention, prosecution, trial, and punishment of persons accused of genocide, crimes against humanity, war crimes, and other crimes under international law committed during the 1971 Liberation War, without the application of the fundamental rights provisions of Part III of the Constitution to such proceedings. A new Article 47A was also inserted excluding from the right to approach the Supreme Court under Article 102 any person detained, prosecuted, tried, or punished under such proceedings.

The First Amendment was motivated by the practical necessity of bringing to justice those responsible for the atrocities committed during the Liberation War, particularly members of the Razakar, Al-Shams, and Al-Badr forces who had collaborated with the Pakistani army in perpetrating mass killings, sexual violence, and other crimes. The International Crimes (Tribunals) Act of 1973 was enacted pursuant to this constitutional amendment. The amendment's purpose was defensible: creating accountability for mass atrocities is a legitimate constitutional objective, and international law recognizes that special procedures may be necessary for the prosecution of war crimes and crimes against humanity.

The constitutional difficulty with the First Amendment, which has generated significant academic commentary, is its explicit exclusion of fundamental rights protection from the tribunal proceedings. The right to a fair trial, the presumption of innocence, the prohibition on ex post facto criminal laws, and the right to judicial review of detention: all these protections, which are guaranteed by Part III of the constitution for all persons, were made inapplicable to International Crimes Tribunal proceedings by the First Amendment. This exclusion was justified at the time by the argument that the magnitude of the crimes being prosecuted required extraordinary measures and that the application of ordinary fair trial standards would make accountability impossible.

The subsequent history of the International Crimes Tribunals under the AL government in the 2000s demonstrated the dangers of this constitutional exclusion. Proceedings that were shielded from constitutional fundamental rights scrutiny were used against political opponents in ways that generated significant international criticism about the fairness of the process. The exclusion of judicial review under Article 102 from tribunal proceedings meant that procedural irregularities in the tribunal could not be effectively challenged in the Supreme Court. This combination of legitimate historical purpose and dangerous constitutional precedent makes the First Amendment one of the most complex and instructive episodes in Bangladesh's constitutional history.

2.3 The Fourth Amendment: The First Constitutional Revolution

If the First Amendment was a response to specific historical circumstances with a defensible if problematic constitutional logic, the Fourth Amendment of January 1975 was something qualitatively different: a wholesale constitutional revolution enacted through the formal amendment procedure. The Fourth Amendment, passed by the First Jatiya Sangsad on January 25, 1975, and assented to by President Mujibur Rahman on the same day, transformed

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Bangladesh from a parliamentary democracy into a one-party presidential system with Sheikh Mujibur Rahman as the sole President and the Bangladesh Krishak Sramik Awami League (BAKSAL) as the sole permitted political organisation.

The constitutional changes effected by the Fourth Amendment were breathtaking in their scope. It amended Articles 11, 66, 67, 72, 74, 76, 80, 88, 95, 98, 109, 116, 117, 119, 122, 123, 141A, 147, and 148, and substituted new versions of Articles 44, 70, 102, 115, and 124. It amended Part III of the constitution, the fundamental rights chapter, effectively hollowing it out. It altered the Third and Fourth Schedules. And it inserted a new part, Part VIA, which created the institutional framework for the one-party state.

The Fourth Amendment is a paradigmatic example of what Schmitt called constitutional destruction: the use of formal amendment procedures to eliminate the fundamental political decisions of the original constitution and replace them with a new constitutional order. The parliamentary democracy established in 1972, with its independent judiciary, its multi-party competition, its parliamentary accountability of the executive, and its constitutional protection of fundamental rights, was replaced by a presidential one-party state in which all political authority was concentrated in a single individual and a single organisation. The formal compliance with Article 142's two-thirds requirement did not make this constitutional transformation legitimate; it made it an abuse of the amendment power, the use of the derivative authority granted by the constituent power to destroy the very constitutional order from which that authority derived.

The Fourth Amendment also illustrates a pathology of constitutional design that has recurred repeatedly in Bangladesh's history: the use of the constitutional amendment power by a government that commanded a supermajority not to make necessary constitutional improvements but to entrench its own power against democratic challenge. Sheikh Mujib's government had won an overwhelming electoral victory in 1970 and had commanded enormous popular support as the leader of the Liberation War. By 1974 and 1975, that support had been substantially eroded by economic mismanagement, political violence, and the failure to establish effective governance. Rather than accepting the democratic verdict that electoral competition might have produced, the government used its remaining parliamentary majority to change the rules of the political game permanently in its own favour. This pattern, the use of constitutional amendment power to foreclose future democratic challenge, would be repeated by subsequent governments with variations in specifics but remarkable consistency in logic.

2.4 The Fifth Amendment: Laundering Military Rule Through Constitutional Change

The history of Bangladesh's constitutional amendments cannot be understood without examining the Fifth Amendment of 1979, which represents one of the most constitutionally extraordinary episodes not only in Bangladesh's history but in the comparative constitutional record. The Fifth Amendment, passed by the Jatiya Sangsad on April 6, 1979, retrospectively validated the proclamations, regulations, orders, and other acts of the martial law regime of General Ziaur Rahman, which had seized power in August 1975 after the assassination of Sheikh Mujib. It also validated the changes made by the martial law regime to the constitution itself, including the removal of secularism and socialism as foundational principles and their replacement with

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"absolute trust and faith in Allah" and "Islamic solidarity," and the insertion of the phrase "Bismillah-ar-Rahman-ar-Rahim" before the preamble.

The constitutional theory of the Fifth Amendment requires careful examination because it involves several distinct claims that are often conflated. The first claim is that retrospective validation of martial law acts is constitutionally possible. The second claim is that constitutional amendments made by a military regime, without any parliamentary process whatsoever, can be given constitutional validity through subsequent parliamentary ratification. The third claim is that fundamental changes to the constitutional foundations, specifically the removal of secularism and socialism as core principles, can be effected through a validation amendment rather than through a direct amendment that explicitly states the change being made and subjects it to public debate.

All three claims are deeply problematic. The retrospective validation of martial law proclamations is constitutionally paradoxical: it requires the restored parliament to exercise the amendment power to ratify acts taken by an authority that had explicitly suspended the constitution and the authority of parliament. If the constitution was suspended during the martial law period, then the acts of the martial law regime derive their validity from force rather than from constitutional authority, and a constitutional amendment that validates them does not, in any meaningful sense, cure their constitutional deficiency; it merely translates their political reality into constitutional text. The German Basic Law's eternity clause, Article 79(3), was specifically designed to prevent precisely this kind of constitutional laundering of authoritarian acts.

The Fifth Amendment's retrospective validation of constitutional changes made by the martial law regime is an even more remarkable constitutional innovation. The Ziaur Rahman regime had, during the period of martial law, issued Proclamations Orders that effectively amended the constitution, substituting new foundational principles for those of 1972. When parliamentary government was restored, the Fifth Amendment ratified these Proclamation Orders, giving parliamentary authority to constitutional changes that had been made without any parliamentary process and without any public debate. This is a form of constitutional laundering that the amendment procedure was plainly not designed to facilitate.

The constitutional validity of the Fifth Amendment was eventually challenged before the Supreme Court. In Khondaker Delwar Hossain v Bangladesh Italian Marble Works Ltd (2010), a Full Court bench of the Appellate Division declared substantial portions of the Fifth Amendment unconstitutional, including the retrospective validation of the suspension of fundamental rights during the martial law period. The Court applied the basic structure doctrine to hold that the amendment could not validly authorise acts that had fundamentally violated the constitutional order. This decision was of major jurisprudential significance, establishing that the Bangladeshi Supreme Court was willing to use the basic structure doctrine to strike down constitutional amendments rather than merely ordinary legislation.

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2.5 The Seventh and Eighth Amendments: Continuing Patterns of Martial Law Ratification and Judicial Decentralisation

The Seventh Amendment of 1986 performed for H.M. Ershad's military government the same constitutional laundering function that the Fifth Amendment had performed for Zia's regime. Like the Fifth, the Seventh retrospectively validated the proclamations, regulations, and acts of a military government that had seized power in violation of the constitutional order. The Seventh Amendment was also challenged in the courts, but its full constitutional examination was complicated by the political circumstances of its enactment and the subsequent history of democratic restoration.

The Eighth Amendment of 1988 produced the most important constitutional litigation in Bangladesh's history, the Anwar Hossain Chowdhury case, which established the basic structure doctrine as a constraint on the constitutional amendment power. The Eighth Amendment made two substantive changes: it designated Islam as the state religion of Bangladesh under a new Article 2A, and it decentralised the High Court Division by establishing permanent benches of the High Court at six divisional cities outside Dhaka. It was the second change that produced the constitutional challenge, and the challenge produced the landmark judgment.

The Anwar Hossain case, decided by the Appellate Division in 1989, was a constitutional watershed in the South Asian legal tradition. A majority of the judges held that the Eighth Amendment's decentralisation of the High Court was unconstitutional because it destroyed the unified character of the Supreme Court, which was a basic feature of the constitutional order that the amendment power could not alter. This holding adopted the basic structure doctrine from Indian constitutional jurisprudence, specifically the Kesavananda Bharati decision of 1973, and applied it to Bangladesh's constitution. The Court held that while the amendment power under Article 142 was broad, it was not unlimited: it could not be used to destroy or alter the basic structure or basic features of the constitution.

The basic structure doctrine, as applied in the Anwar Hossain case, identified several features of the constitution as beyond the amendment power: the supremacy of the constitution, the republican and democratic character of the state, the unitary character of the state, the separation of powers, and the independence of the judiciary. The specific holding on judicial decentralisation was that the proposal to move High Court benches outside Dhaka destroyed the unified nature of the Supreme Court, which was a basic structure element. The Islam as state religion provision was not directly challenged in the same litigation, leaving its constitutional status in a complicated intermediate position that persists to this day.

2.6 The Thirteenth and Fifteenth Amendments: Democratic Innovation and Constitutional Destruction

The Thirteenth Amendment of 1996, which created the Caretaker Government system for conducting elections, represents the most interesting and constitutionally complex of Bangladesh's amendments from the perspective of democratic design. The system was the product of a genuine political crisis: successive elections under the incumbent government had

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been widely perceived as fraudulent, and the BNP and AL had reached a rare moment of bipartisan agreement that a structural solution was needed. The Caretaker Government system, under which a non-partisan interim administration took over from the elected government during the election period, was a creative institutional innovation designed to remove the incumbent's advantage in electoral administration.

From a constitutional design perspective, the Caretaker Government system was an interesting example of what Tarunabh Khaitan has called "moderated parliamentarism": the modification of the pure parliamentary system to address its specific pathologies, in this case the use of incumbency advantage to manipulate elections. The system worked reasonably well in the elections of 1996 and 2001, producing credible electoral outcomes that commanded broad acceptance. Its failure in 2006 and 2007, which led to the military-backed Emergency government, reflected the system's vulnerabilities to manipulation at the margins rather than a fundamental design flaw.

The Fifteenth Amendment of 2011, by contrast, was the most sweeping and constitutionally destructive amendment since the Fourth Amendment of 1975. Enacted by the AL government with its massive parliamentary majority, the Fifteenth Amendment made fundamental changes across the entire constitutional order. It abolished the Caretaker Government system. It restored the four foundational principles of 1972, specifically nationalism, socialism, democracy, and secularism, but simultaneously retained the Islam as state religion provision added by the Eighth Amendment, producing a constitutional combination that is, at a minimum, theoretically incoherent. It prohibited political parties with religious names or platforms. It entrenched its own key changes against future amendment through the extraordinary Article 7B. And it criminalised what it called "seizure of power in an unconstitutional manner," effectively constitutionalising a prohibition on coups.

The Fifteenth Amendment's Article 7B deserves extended examination because it is at the heart of the current constitutional impasse. Article 7B, inserted as a new provision by the Fifteenth Amendment, reads: "Notwithstanding anything contained in article 142 of this Constitution, the preamble, all articles of Part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles 150, 56(2), and articles mentioned in Part II will not be amendable by way of insertion, modification, substitution, repeal or by any other means."

The scope of this provision is extraordinary. Parts I, II, and III of the constitution contain, respectively, the provisions on the Republic and its territory, the fundamental principles of state policy including the four foundational principles, and the fundamental rights. Article 150 contains transitional provisions. The combined effect of Article 7B is to place approximately one third of the entire constitutional text beyond the amendment power, including the very provisions about the foundational principles of the state that had been the subject of the most intense constitutional controversy throughout Bangladesh's history.

The jurisprudential problems with Article 7B are severe and have been identified with great precision by a growing body of constitutional scholarship. Kawser Ahmed's analysis in the Israel Law Review, Md. Isfar Sarker's work published in the South Asian Law Review Journal in 2025,

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and Arfan Ahmed's analysis in the Beijing Law Review in 2024 all converge on several critical objections.

The first objection is the self-reference problem. Article 7B purports to be unamendable by its own terms, but since it was inserted by the Fifteenth Amendment through the ordinary amendment procedure of Article 142, it is constitutionally paradoxical. The amendment power that created Article 7B is, by Article 7B's own terms, insufficient to create permanent unamendability, because the amendment power is a constituted power that derives from the constitution. If the original constituent power of 1972 did not establish any unamendable provisions, then no subsequent amendment can create provisions that are unamendable by the original constituent power's successor. The Fifteenth Amendment is using the derivative amendment power to bind the same amendment power in perpetuity, which the derivative nature of that power does not permit.

The second objection is the political motivation problem. Article 7B was not the product of a constitutional founding moment, a moment of broad democratic deliberation about fundamental constitutional values. It was enacted by a single political party with a large parliamentary majority, acting primarily to entrench its own constitutional innovations against reversal by future governments. The foundational justification for constitutional unamendability, the pre-commitment argument, works only if the unamendable provisions genuinely serve the interests of the political community as a whole rather than the partisan interests of the majority that enacted them. Article 7B fails this test comprehensively: it protects from amendment precisely the features of the constitution that the AL inserted and that the BNP and other parties objected to.

The third objection is the content problem. The provisions that Article 7B protects from amendment are not limited to genuine foundational democratic values such as the rule of law, judicial independence, or fundamental human rights. They include substantive policy choices, such as the four foundational principles and the language of the preamble, that reasonable people can and do disagree about. Protecting specific policy choices from democratic revision is not the legitimate use of the unamendability device; it is constitutional entrenchment of partisan preferences.

CHAPTER THREE: THE BASIC STRUCTURE DOCTRINE IN BANGLADESH: FROM JUDICIAL CREATIVITY TO CONSTITUTIONAL CODIFICATION AND BACK TO JUDICIAL SCRUTINY

3.1 The Kesavananda Legacy and Its South Asian Diffusion

To understand the basic structure doctrine as it has developed in Bangladesh, it is necessary to understand its origins and its diffusion through South Asian constitutional jurisprudence. The doctrine emerged in India in the landmark case of Kesavananda Bharati v State of Kerala (1973), decided by a full bench of thirteen judges of the Supreme Court of India in one of the most consequential constitutional decisions in the common law world.

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The background to Kesavananda was a sustained confrontation between the Indian Parliament and the Supreme Court over the constitutionality of land reform legislation and other social welfare measures. The Parliament had enacted several constitutional amendments to overrule Supreme Court decisions that had invalidated these measures on grounds of violation of fundamental rights. The Parliament's argument was straightforward: as the body empowered to amend the constitution, it could amend the constitution in whatever way it chose, including by removing or limiting the fundamental rights that the Supreme Court had used to strike down its legislation. The Supreme Court was confronted with the question of whether there were any limits on this amendment power.

By a narrow majority of seven to six, the Kesavananda Court held that there were. The majority held that while the Indian Parliament had a broad power to amend the constitution under Article 368, it could not use that power to amend the constitution in a way that destroyed or abrogated its "basic structure" or "basic features." The majority did not precisely define what these basic features were, leaving this to be determined on a case-by-case basis in subsequent litigation. Over the following decades, the Indian Supreme Court identified a substantial list of basic features that the amendment power could not touch: the supremacy of the constitution, the republican and democratic form of government, the secular character of the constitution, the separation of powers, the rule of law, the independence of the judiciary, federal structure, the unity and integrity of India, and the sovereignty of the nation.

Kesavananda was decided in 1973 and was therefore directly contemporaneous with the drafting of Bangladesh's constitution. Its influence on the Bangladesh framers is not fully documented, but the proximity in time suggests that at least some of the constitutional drafters were aware of the emerging Indian doctrine. The Bangladeshi Supreme Court's adoption of the basic structure doctrine in the Anwar Hossain case of 1989 was, in any event, heavily influenced by Kesavananda, with the majority judgment citing the Indian decision extensively and adopting its central reasoning.

The diffusion of the basic structure doctrine through South Asia reflects a common set of constitutional anxieties about the abuse of amendment power, anxieties that are themselves a product of the specific political histories of the region's democracies. India, Bangladesh, Pakistan, and Sri Lanka have all experienced governments that attempted to use the formal amendment power to entrench themselves in power, eliminate opposition, and subvert the foundational commitments of their constitutions. The basic structure doctrine represents the judiciary's response to this pattern: an assertion of judicial authority to police the outer limits of the amendment power on the basis of principles that transcend the specific text of any particular provision.

3.2 The Anwar Hossain Case: Bangladesh Adopts the Doctrine

The Supreme Court of Bangladesh's adoption of the basic structure doctrine in the Anwar Hossain case was a significant assertion of judicial authority, and it requires careful examination both for what the Court actually held and for the reasoning it deployed.

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The case arose from a challenge to the Eighth Amendment's provision for establishing permanent benches of the High Court Division in six divisional cities outside Dhaka. The challenge was brought by a group of lawyers who argued that the decentralisation of the High Court violated the unified character of the Supreme Court, which was an essential feature of the constitutional order. The Attorney General argued that since Article 142 gave parliament a broad power to amend any provision of the constitution, there were no substantive limits on what those amendments could contain.

The majority of the Appellate Division rejected the Attorney General's argument and held that the amendment power was not unlimited. Drawing extensively on Kesavananda, the majority identified several basic structural features of the Bangladesh constitution that the amendment power could not destroy: the supremacy of the constitution, the republican and democratic character of the state, the unitary character of the state, the separation of powers, the independence of the judiciary, and the fundamental rights of citizens. The Court held that the decentralisation of the High Court Division destroyed the independence and unified character of the judiciary, which was a basic structural feature, and was therefore beyond the amendment power.

The reasoning of the Anwar Hossain majority deserves critical examination. The Court's identification of the "basic features" of the constitution was not derived from any explicit constitutional text, because Article 142 contains no express limits on the amendment power. The identification was instead based on the Court's interpretation of the overall structure and spirit of the constitution: the basic features were those that are so fundamental to the constitutional design that amending them would destroy the character of the constitutional order rather than merely modifying it.

This approach to constitutional interpretation is defensible as a matter of constitutional theory. The problem is that it gives the judiciary enormous discretion to determine which constitutional features are basic and which can be altered through the amendment procedure. If the judiciary's determination of the basic structure becomes a mechanism for constitutionalising the judiciary's own policy preferences, it ceases to be a principled constitutional doctrine and becomes an instrument of judicial supremacy. The Indian Supreme Court's expanding list of basic features over the decades since Kesavananda illustrates this risk: what began as a narrow doctrine protecting the structural integrity of the constitutional order gradually expanded to encompass a broad range of substantive policy choices that the Court preferred to see entrenched against democratic revision.

3.3 The Fifteenth Amendment's Response: Constitutional Codification of the Doctrine

The relationship between the Fifteenth Amendment's Article 7B and the basic structure doctrine is more complex than it initially appears. On its face, Article 7B can be read as constitutionalising the basic structure doctrine: converting the judge-made doctrine of implicit unamendability into an explicit, textually specified list of unamendable provisions. This reading has some support in the structure of Article 7B, which uses language closely related to the basic structure concept.

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But the relationship between Article 7B and the judicial basic structure doctrine is actually one of partial substitution rather than mere codification. The judicial basic structure doctrine, as developed in the Anwar Hossain case, protected features of the constitution based on their structural importance to the constitutional order as a whole, without specifying in advance exactly what those features were. The doctrine was open-ended and context-sensitive, allowing the Court to identify basic features on a case-by-case basis as specific amendment challenges arose. Article 7B, by contrast, specifies in advance exactly which provisions are unamendable, regardless of whether they satisfy any structural importance criterion.

The consequence of this substitution is that Article 7B protects many provisions that are not "basic" in any structural sense while potentially leaving unprotected some structural features that the judicial doctrine would have protected. The preamble's specific language about the four foundational principles, the detailed provisions of Part II on directive principles, and various specific rights provisions in Part III are protected by Article 7B regardless of whether their alteration would destroy the structural integrity of the constitutional order. But the basic structure doctrine's implicit protection of features such as the federal-unitary character of the state and the rule of law, which are not explicitly mentioned in Article 7B, is displaced by the codified list.

Kawser Ahmed's authoritative analysis in the Israel Law Review concludes that Article 7B, rather than strengthening the basic structure doctrine, has in fact displaced it as the primary tool for judicial review of constitutional amendments. The codification of a specific list of unamendable provisions replaced the open-ended judicial doctrine with a textual rule, and the Asaduzzaman case of 2014 confirmed this displacement: the Court struck down a constitutional amendment on the basis of Article 7B without invoking the basic structure doctrine, effectively treating Article 7B as having superseded the judge-made doctrine.

3.4 The Asaduzzaman Case and the Post-Fifteenth Amendment Constitutional Order

The case of Asaduzzaman Siddiqui v Bangladesh (2014) arose from a challenge to a constitutional amendment that altered the mechanism for removing Supreme Court judges from a parliamentary impeachment process to a process conducted by the Supreme Judicial Council. The amendment was challenged on the ground that it violated Article 7B by altering the provisions of Part III of the constitution relating to the fundamental rights of judicial officers.

The Appellate Division held that the amendment was unconstitutional, but it did so on the basis of Article 7B rather than the basic structure doctrine. The Court found that the amendment affected provisions falling within the scope of Article 7B's entrenchment and was therefore beyond the amendment power. This holding confirmed Kawser Ahmed's analytical prediction: Article 7B had indeed displaced the basic structure doctrine as the primary constitutional constraint on the amendment power.

The Asaduzzaman decision has been subjected to both praise and criticism in the subsequent literature. Those who praise it argue that it demonstrates the constitutional utility of Article 7B as an enforceable constraint on parliamentary overreach, and that the Court correctly identified the independence of the judiciary as a protected value. Critics, including Sarker in his 2025 South Asian Law Review Journal article, argue that the Court's reliance on Article 7B created a

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precedent that entrenches the highly problematic Fifteenth Amendment's innovations as constitutionally protected, making it much harder to reform provisions that should be subject to democratic revision.

The most significant development since the Asaduzzaman case is the report, documented in Sarker's 2025 article, that Article 7B has itself been subjected to judicial scrutiny and has been declared unconstitutional by the Supreme Court. This report, citing recent Supreme Court developments, suggests that the apex judiciary has taken the view that Article 7B's self-entrenching character violates the principles of constitutional democracy by attempting to freeze the constitutional order in the specific form preferred by the Fifteenth Amendment's authors. If this report is accurate, it represents an extraordinary judicial development: the Supreme Court using the basic structure doctrine to strike down the provision that purported to codify and thereby supersede the basic structure doctrine. The doctrine, declared dead by the Asaduzzaman decision, appears to have been resurrected by the judiciary to kill the provision that killed it.

CHAPTER FOUR: ARTICLE 142 IN DETAIL: THE AMENDMENT PROCEDURE, ITS OPERATION, AND ITS PROPOSED REFORM

4.1 The Text and Scope of Article 142

Article 142 of the Constitution of Bangladesh is the foundational provision governing constitutional amendment. In its current form, as amended over the decades, it reads as follows in its essential provisions: notwithstanding anything in the constitution, any provision thereof may be amended by way of addition, alteration, substitution, or repeal by Act of Parliament, provided that no bill for such amendment shall be allowed to proceed unless the long title thereof expressly states that it will amend a provision of the constitution, and no such bill shall be presented to the President for assent unless it is passed by the votes of not less than two-thirds of the total number of members of Parliament.

The 1972 version of Article 142 also contained a referendum requirement for amendments to certain specified provisions: articles relating to the preamble, to the fundamental principles of state policy, and to certain other provisions required ratification by referendum in addition to the parliamentary two-thirds majority. This referendum requirement was removed by the Fourth Amendment of 1975, eliminating the additional procedural protection for the most fundamental constitutional provisions. The removal of the referendum requirement was itself one of the constitutional changes effected by the Fourth Amendment as part of the AL government's move toward one-party rule.

The current Article 142 therefore requires only a two-thirds majority of all members of parliament for any constitutional amendment, without any additional requirements such as referendum ratification or supermajority approval by a constituent assembly. This means that a party with 233 out of 350 seats in parliament can amend any provision of the constitution, subject only to the constraint of Article 7B. The BNP, which won approximately 263 seats in the February 2026 election, commands a more than two-thirds majority and therefore has the formal

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constitutional authority to amend the constitution at will, except for the provisions protected by Article 7B.

The simplicity of Article 142's requirements, relative to the amendment procedures of many comparable constitutions, is one of the central features of Bangladesh's constitutional design that has contributed to its constitutional instability. The Indian constitution requires, for many of its provisions, not only a two-thirds majority of parliament but also ratification by at least half the state legislatures, a dual requirement that significantly raises the practical barrier to amendment. The South African constitution requires different majorities for different types of amendment, with the most fundamental provisions requiring a supermajority in the National Assembly, a six-province majority in the National Council of Provinces, and in some cases provincial legislature support as well. The German Basic Law requires a two-thirds majority in both the Bundestag and the Bundesrat and, through the eternity clause of Article 79(3), places certain provisions beyond any amendment. Bangladesh's Article 142, with its single parliamentary two-thirds requirement, is comparatively easy to satisfy for any party with a comfortable parliamentary majority.

4.2 The Referendum Provision: A Proposed Addition

The July Charter of 2025 proposes the restoration of a referendum requirement for amendments to certain fundamental provisions. Specifically, the Charter proposes that amendments to articles covering the fundamental principles, the structure of the executive, the caretaker government system, and the amendment procedure itself should require, in addition to parliamentary approval, approval by national referendum. This proposal, if implemented through constitutional amendment, would significantly raise the barrier to the most fundamental constitutional changes.

The theoretical justification for adding a referendum requirement to constitutional amendment is compelling. For changes that are truly fundamental, changes to the identity and foundational principles of the constitutional order, the legitimation of a two-thirds parliamentary majority alone may be insufficient. Parliamentary majorities can be manufactured through electoral manipulation, as Bangladesh's history demonstrates. They can be produced by temporary political circumstances that do not reflect deep or durable popular preferences. Adding a referendum requirement for the most fundamental changes ensures that these changes are submitted directly to the people rather than being made by parliamentary representatives who may not accurately reflect popular preferences.

The practical concerns about referendum requirements are also significant and deserve acknowledgment. Referendums are subject to manipulation through the framing of questions, the timing of votes, the allocation of resources for campaign materials, and the information environment in which voters make their decisions. The February 2026 referendum in Bangladesh itself illustrates some of these problems: the bundling of multiple distinct reform proposals in a single yes-or-no question prevented voters from making nuanced judgments about individual proposals. A well-designed referendum system would require single-question votes on specific proposed changes, adequate campaign periods, balanced information provision, and robust rules against the use of state resources for campaign purposes.

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The comparative experience with constitutional referendums is mixed. In Ireland, the constitutional amendment referendum system has produced a remarkably inclusive and deliberative approach to fundamental constitutional change, with citizens' assembly processes being used in recent years to deliberate on proposals before they are put to referendum. The Irish experience with the marriage equality referendum of 2015 and the abortion referendums of 2018 and 2019 illustrates how a well-designed referendum process can produce thoughtful democratic decisions on deeply contested constitutional questions. In contrast, some referendums in Latin American and Eastern European contexts have been used by incumbent governments as plebiscitary devices to legitimate constitutional changes that bypassed democratic deliberation, producing outcomes that served the incumbent's interests while claiming popular democratic mandate.

The design of the referendum requirement proposed by the July Charter must therefore be evaluated not only in terms of whether referendums are a good idea in principle but also in terms of the specific rules and procedures that would govern their conduct. If referendums are to be genuinely democratic mechanisms for constitutional revision, they require: independent administration by a truly independent election commission; clear single-question ballot formulations; adequate deliberation periods; balanced public information campaigns; prohibition on the use of state resources for one side; strong judicial oversight; and clear rules about what threshold of voter participation and approval constitutes a valid mandate for constitutional change.

4.3 The Supermajority Question: How High is High Enough?

The July Charter proposes increasing the difficulty of constitutional amendment by requiring that amendments to the constitution must pass not only by a two-thirds majority in the National Assembly but also by a simple majority in the proposed upper house. This two-house requirement is a significant institutional change from the current single-house requirement.

The constitutional theory of bicameral constitutional amendment is well-developed in comparative constitutional scholarship. The requirement that constitutional amendments pass both chambers of a bicameral legislature provides an additional veto point that makes amendments harder to enact. Depending on the composition of the two chambers, this additional requirement can prevent or delay amendments that command majority support in one chamber but not the other.

The upper house proposed by the Constitutional Reform Commission would be composed of 100 senators allocated proportionally based on the share of votes received by parties in the National Assembly elections, plus five members nominated by the President to represent marginalised groups. Since the upper house is allocated proportionally, it would not necessarily reflect the two-party distribution of seats in the lower house. If the BNP won sixty percent of seats in the lower house but only forty percent of the popular vote, the upper house would have only forty out of one hundred proportionally allocated senators from the BNP. This means that the BNP's two-thirds lower house majority would not automatically translate into a majority in the upper house, and constitutional amendments requiring majority support in the upper house would need to attract opposition support.

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This is a significant and well-designed feature of the bicameral amendment requirement. If the lower house is dominated by a single party with a manufactured supermajority, as Bangladesh has repeatedly experienced, the proportionally composed upper house would provide a more genuine reflection of popular preferences and would require the governing party to build broader political consensus for constitutional amendments. The July Charter's proposal that constitutional amendments require majority approval in the upper house is therefore a meaningful structural reform that would substantially raise the practical difficulty of using constitutional amendment as a tool of partisan entrenchment.

The limitation of this proposal is that it provides protection against constitutional manipulation only so long as the upper house retains its proportional composition. A governing party with genuine majority popular support, rather than a manufactured parliamentary supermajority, could potentially achieve a majority in both houses simultaneously. Moreover, if the rules governing the upper house are themselves subject to constitutional amendment by the same procedure, a sufficiently determined parliamentary majority could amend those rules before proceeding to amend the constitution in ways that the original rules would have prevented. The protection against this sequence requires that the rules governing the upper house's constitutional amendment role be themselves more firmly entrenched, which creates a recursive problem of constitutional entrenchment that becomes increasingly difficult to resolve at each level.

CHAPTER FIVE: THE CONSTITUTIONAL REFORM COUNCIL CONTROVERSY: ARTICLE 142, CONSTITUENT POWER, AND THE 2026 IMPASSE

5.1 The Legal Architecture of the Reform Council and Its Constitutional Basis

The most immediate and politically consequential constitutional dispute in Bangladesh as of April 2026 is the controversy over the Constitution Reform Council envisaged by the July National Charter's implementation framework. Understanding this controversy requires careful examination of the legal architecture that was supposed to create the Reform Council and the constitutional objections that have been raised against it.

The November 2025 Presidential Order, the July National Charter (Constitutional Amendment) Implementation Order 2025, provided that in the event of an affirmative referendum vote, the newly elected members of parliament would serve as a Constitution Reform Council tasked with completing the constitutional amendments specified in the July Charter within 180 working days of its first session. Members of parliament would, on election, take oaths both as Members of Parliament and as Members of the Reform Council. The Reform Council would examine the proposed amendments collectively before formal constitutional amendment bills were introduced in parliament under Article 142. Upon the Council's completion of its work and dissolution, the parliament would proceed to enact the amendments through the normal Article 142 process.

The BNP's legal objection to this framework focuses on several distinct constitutional points that deserve systematic examination. The BNP's position is that any constitutional amendment must follow the procedure laid out in Article 142 of the Constitution. Article 65 establishes parliament

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as the supreme legislative body and vests law-making power exclusively in it. The BNP argues that MPs cannot legally serve on a parallel constitutional body unless that body is created by law, and since the constitution does not mention a Reform Council and no law has been passed to create one, the Reform Council lacks constitutional authority. Asia Times

This argument has genuine constitutional force. The constitution provides for constitutional amendment through a specific procedure in Article 142. A presidential order that purports to create a parallel constitutional forum for the preliminary examination of constitutional amendments before their formal introduction in parliament is not obviously within the President's constitutional powers. The President acts on the advice of the Prime Minister in most matters, and a presidential order that modifies the constitutional amendment process without an enabling act of parliament is of questionable constitutional validity.

The BNP also argues that it already possesses the parliamentary majority needed to implement the July Charter's reforms through the normal Article 142 process. With more than two-thirds of National Assembly seats, the BNP can introduce and pass constitutional amendments without needing to create a separate Reform Council. From the BNP's perspective, the Reform Council proposal is therefore constitutionally unnecessary as well as constitutionally doubtful.

5.2 The Opposition's Counter-Argument: Democratic Mandate and Procedural Pluralism

The opposition parties, primarily Jamaat-e-Islami and the National Citizen Party, advance several arguments in response to the BNP's constitutional objection. Jamaat-e-Islami and the NCP argue that the referendum approving the July Charter created a political mandate for a reform process that extends beyond ordinary legislative amendments. In their interpretation, the council was designed to serve as a temporary constitutional forum that would examine reforms collectively before formal amendment bills were introduced in parliament. Asia Times

The opposition's argument can be reformulated in constitutional theory terms. The July 2024 uprising, on this view, represented an exercise of the people's constituent power, their original sovereignty, which creates a mandate that cannot be fully captured or constrained by the existing amendment procedure. The referendum of February 2026 expressed this constituent power in a formal democratic exercise. The Reform Council represents the institutional mechanism through which the constituent power mandate is translated into specific constitutional amendments. The BNP's insistence on reducing this process to ordinary Article 142 amendment bill procedure misses the constitutional significance of the reform moment: this is not a normal period of constitutional adjustment but a transformative constitutional moment that requires a distinctive institutional response.

This constitutional theory argument has both its strengths and its limitations. Its strength is that it captures something real about the difference between constitutional moments, periods of heightened constitutional consciousness driven by fundamental political crises, and ordinary constitutional revision. The July 2024 uprising was not an ordinary political event; it represented a broad popular rejection of an entire regime of constitutional governance that had failed Bangladesh's people. The demand for structural constitutional transformation that emerged from

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the uprising cannot be fully satisfied by ordinary parliamentary legislation, however well-intentioned.

The limitation of the argument is that constitutional moments cannot suspend the legal constraints of the existing constitutional order without creating serious risks of constitutional abuse. If the referendum operates outside the existing constitution, it is neither an amendment nor a reform but a refounding of the constitution itself. An administration cannot rest on a constitutional foundation for its legitimacy while denying it. The Diplomat The interim government's legitimacy rested on the doctrine of necessity, which the courts applied to uphold its authority within the constitutional framework. If the reform process then claims authority to bypass the constitutional framework through an appeal to popular sovereignty, it creates a logical contradiction that undermines both the legitimacy of the reform process and the stability of the constitutional order.

5.3 The Article 7B Obstacle: Can the Eternal Clause Be Removed?

The deepest constitutional problem facing the July Charter's reform agenda is not the procedural dispute about the Reform Council but the substantive barrier created by Article 7B. Several of the reform proposals in the July Charter would, if implemented, affect provisions protected by Article 7B: the restoration of the caretaker government system (which alters provisions of the preamble and Part II), the revision of the foundational principles (which affects Part II), and various changes to fundamental rights (which affects Part III).

Article 7B opens with "Notwithstanding anything contained in article 142" and declares specified constitutional domains "not amendable by way of insertion, modification, substitution, repeal, or by any other means." The final phrase performs critical work by preventing circumvention of entrenchment through alternative mechanisms, including plebiscites. The Diplomat

This means that even a referendum cannot, on the plain text of Article 7B, amend the provisions it protects. A referendum is a mechanism for constitutional change through popular vote rather than parliamentary amendment, and Article 7B's "by any other means" language appears to exclude this mechanism as well. The July Charter's defenders respond that Article 7B is itself unconstitutional and therefore cannot be applied as a constraint on the reform process. If Article 7B is invalid, then the constitutional landscape is governed by the pre-Fifteenth Amendment basic structure doctrine, which is more flexible and judicially managed.

The question of whether Article 7B is itself unconstitutional has become one of the central legal questions of Bangladesh's constitutional transition. The basic structure doctrine, if applied to Article 7B itself, would ask whether Article 7B destroys any basic structural feature of the constitution. The pre-commitment argument for unamendability suggests that Article 7B should be valid, since constitutions can legitimately entrench fundamental values against amendment. But as argued in the previous chapter, Article 7B fails the tests of genuine unamendability because it protects partisan innovations rather than foundational democratic values, was enacted through the same Article 142 amendment power it purports to constrain, and creates a self-referential paradox that the constitutional theory of amendment power cannot coherently resolve.

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Article 7B is popularly termed an eternal clause owing to its self-entrenching character. This provision has recently been declared unconstitutional by the apex judiciary of Bangladesh. Thelawbrigade If this judicial development is confirmed and upheld, it removes the most significant legal obstacle to the implementation of the July Charter's reform agenda. Without Article 7B, the existing constitutional landscape is governed by the basic structure doctrine of the Anwar Hossain case, which is more flexible and allows amendment of constitutional provisions that do not destroy the constitution's basic structural features. The reform proposals in the July Charter would then need to be evaluated individually against the basic structure doctrine: some would clearly pass (changes to the foundational principles), some would raise questions (changes to the structure of parliament), and some would need careful constitutional drafting (changes to fundamental rights).

The judicial declaration of Article 7B's unconstitutionality, if confirmed, also has significance for the Fifteenth Amendment as a whole. If the most constitutionally problematic innovation of the Fifteenth Amendment, the attempted permanent entrenchment of AL constitutional preferences, has been struck down by the Supreme Court, the remaining provisions of the Fifteenth Amendment become more clearly subject to revision through the normal amendment process, subject to the basic structure doctrine. This would substantially clarify the constitutional pathway for the July Charter's implementation.

5.4 The Reform Council as Constituent Assembly: Comparative Perspectives

The dispute about the Constitution Reform Council reflects a broader set of questions about whether extraordinary constitutional transformation requires extraordinary institutional mechanisms or can be achieved through ordinary constitutional procedures applied to exceptional political circumstances.

The comparative constitutional record shows that post-crisis constitutional transformations have been implemented through a variety of institutional mechanisms. South Africa's post-apartheid constitution was drafted by an elected Constitutional Assembly that was composed of the members of both houses of the newly elected parliament, sitting as a single body. This mechanism, combining electoral legitimacy with a dedicated constitutional drafting process, provided both democratic authority and procedural discipline. Kenya's 2010 constitution was drafted by a Committee of Experts, reviewed by a National Constitutional Conference, and then approved by the National Assembly before being submitted to a referendum. Nepal's 2015 constitution was drafted by an elected Constituent Assembly that took several years and multiple elections to complete its work. Iceland's crowdsourced constitutional draft of 2011, developed by a Constitutional Council elected by citizens, was ultimately not adopted, demonstrating that innovative democratic processes do not automatically produce political acceptance.

The Bangladesh Reform Council proposal is closest to the South African model: the newly elected parliament serves in a dual capacity, both as ordinary legislature and as constitutional assembly. The constitutional theory of this dual role is defensible: the members of parliament were elected specifically in the context of a constitutional reform moment, with the reform agenda prominently featured in the campaign. They carry a democratic mandate that can plausibly be interpreted as including authority to participate in a constitutional revision process.

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The BNP's constitutional objection to the dual role, based on Article 65's vesting of legislative power in parliament and Article 142's specification of the amendment procedure, is technically well-founded but somewhat formalistic. If the parliament, through an explicit act of legislation, creates a Constitution Reform Council and defines its membership and procedures, the constitutional objection largely disappears: the council would be a body established by law (as Article 65 requires for bodies in which parliament participates), and its work product would be submitted to the parliament for approval through Article 142 procedures. The real political dispute is not about constitutional procedure but about whether the BNP, having secured its two-thirds majority, wants to implement the reform agenda through a process that gives opposition parties significant influence, or whether it prefers to implement the reform agenda unilaterally through its own parliamentary majority.

CHAPTER SIX: THE SCOPE OF LEGITIMATE CONSTITUTIONAL CHANGE: ABUSIVE CONSTITUTIONALISM, CONSTITUTIONAL DISMEMBERMENT, AND THE LIMITS OF POPULAR DEMOCRACY

6.1 Abusive Constitutionalism: When the People's Power Is Used Against the People

The concept of abusive constitutionalism, developed by David Landau in his influential 2013 article in the UC Davis Law Review and extended by his collaboration with Rosalind Dixon in subsequent years, refers to the use of formally constitutional mechanisms to undermine the substantive conditions for democratic governance. Abusive constitutionalism differs from classical coups or constitutional revolutions in that it works within the formal procedures of the constitutional order: it uses elections, parliamentary supermajorities, formal amendment procedures, and judicial appointments to achieve outcomes that are, in their substance, anti-democratic.

Landau identified several characteristic patterns of abusive constitutionalism. One is the manipulation of electoral rules to give the governing party a systematic advantage in future elections. Another is the weakening of accountability institutions, specifically courts, anti-corruption commissions, and election commissions, through formal appointment procedures that produce reliably loyal officials. A third is the aggregation of formal constitutional powers in the executive, using constitutional amendments to transfer authority from independent institutions to the president or prime minister. A fourth is the use of constitutional provisions to perpetuate the governing party's hold on power by preventing or deterring opposition.

Bangladesh's Fifteenth Amendment represents a textbook example of abusive constitutionalism in Landau's sense. The AL government used its three-quarter parliamentary majority to enact a constitutional amendment that abolished the caretaker government system (the institution most responsible for free elections in Bangladesh's history), entrenched its own foundational principles against amendment, inserted an Islam as state religion provision that complicates the political space for its opponents, and placed these changes beyond future democratic revision through Article 7B. The formal constitutional procedures were followed: the amendment was introduced as a bill, passed by a parliamentary supermajority, and received presidential assent.

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But the substantive effect was anti-democratic: it systematically strengthened the AL's structural advantages in future electoral competition while claiming the legitimacy of constitutional process.

Dixon and Landau's more recent work, particularly their 2015 article in the International Journal of Constitutional Law on transnational constitutionalism and unconstitutional constitutional amendments, explores the conditions under which the international community of constitutional scholars and institutions can contribute to resisting abusive constitutionalism. They argue that there is a "thin" doctrine of unconstitutional constitutional amendment that is compatible with democratic legitimacy: it holds that amendments that destroy the very conditions necessary for democratic self-governance, specifically genuinely competitive elections, the meaningful participation of opposition parties, independent courts, and freedom of speech and association, can be challenged as unconstitutional even if they comply with the formal amendment procedure.

This thin doctrine of unconstitutional constitutional amendment has direct application to the Article 7B problem. Article 7B's entrenchment of the abolition of the caretaker government system destroyed a key condition for competitive elections in Bangladesh. The entrenchment of this destruction through an unamendability clause compounds the original abuse: not only is the anti-democratic provision enacted, but future democratic majorities are prevented from reversing it. On the Dixon-Landau analysis, Article 7B is vulnerable to challenge as an unconstitutional constitutional amendment precisely because it entrenches a provision that itself represents an instance of abusive constitutionalism.

6.2 Constitutional Dismemberment: A Framework for Understanding Bangladesh's Amendment History

Richard Albert's concept of "constitutional dismemberment," developed in his 2019 book Constitutional Amendments, provides another useful analytical framework for understanding Bangladesh's amendment history. Albert distinguishes between constitutional amendment, which modifies the constitutional text while preserving the constitutional order, and constitutional dismemberment, which uses the formal amendment power to replace fundamental constitutional commitments with different ones, effectively destroying the original constitutional order and creating a new one.

The test for constitutional dismemberment, in Albert's framework, is whether the amendment changes only the specific provision it purports to change or whether it alters the fundamental political commitments of the constitutional order, its basic identity as a type of government, its distributional choices about how power is allocated, and its normative commitments about rights and values. The Fourth Amendment of 1975, which converted Bangladesh from a parliamentary democracy to a one-party presidential state, is a paradigmatic constitutional dismemberment: it changed not only specific provisions but the entire character of the constitutional order. The Fifteenth Amendment, which abolished the caretaker government system, restored one set of foundational principles while retaining contradictory others, and attempted to perpetuate these changes through the Article 7B eternal clause, is a more complex case that shares some features of constitutional dismemberment.

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Bangladeshi scholarship has engaged productively with the constitutional dismemberment framework. The Constitution of Bangladesh is the solemn will of the people written at the dawn of the nation's history as the supreme law of the land. Initially, it was a rigid yet amendable one and over the course of next four decades, the restrictions over the amendment process has evolved into a hybrid mechanism of both interpretive and constructive unamendabilities. In 2011, the constructive unamendability was replaced with new provisions petrifying one-third of the Constitution through the Fifteenth Amendment which was not introduced in a constitutionally coherent way. Thelawbrigade

Md. Isfar Sarker's 2025 article in the South Asian Law Review Journal applies the constitutional dismemberment framework to the Fifteenth Amendment with particular precision, arguing that the combination of substantive constitutional changes and the Article 7B petrification constitutes a form of unconstitutional constitutional change that should be subject to judicial review under the basic structure doctrine. Sarker's analysis reinforces the conclusion that the Supreme Court's reported invalidation of Article 7B is jurisprudentially defensible and constitutionally necessary.

6.3 Popular Sovereignty and Its Constitutional Limits: A Philosophical Resolution

The deepest philosophical tension in Bangladesh's current constitutional moment is between two legitimate but competing constitutional values: popular sovereignty and constitutional stability. The claim of popular sovereignty says that the people, as the ultimate source of constitutional authority, must retain the power to alter their constitutional order through democratic processes, even to the point of changing provisions that previous constitutional drafters attempted to entrench permanently. The claim of constitutional stability says that a constitution whose provisions can be revised through ordinary democratic processes, even processes that are formally elevated above ordinary legislation, cannot effectively limit power, protect rights, or provide the stable framework for political life that constitutional government requires.

The resolution of this tension requires a nuanced position that refuses the false choice between absolute popular sovereignty, in which no constitutional provision is beyond democratic revision, and absolute constitutional permanence, in which certain provisions are forever beyond democratic change. The position that best reconciles these values distinguishes between the content of the provisions at issue and the procedures through which they might be changed.

For provisions that protect the foundational conditions of democratic self-governance, specifically competitive elections, freedom of speech and association, protection of minorities against majority persecution, and the independence of the judiciary, the threshold for constitutional change should be extremely high, requiring not only parliamentary supermajorities but also referendum approval and possibly other forms of democratic deliberation. These provisions protect the conditions of democracy itself, and their alteration through simple democratic majority processes would be paradoxical: using democracy to destroy the conditions for future democracy.

For provisions that represent substantive policy choices that reasonable people can disagree about, including the specific foundational principles of the state, the precise structure of parliamentary institutions, and the specific economic rights guaranteed by the constitution, the

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threshold for constitutional change should be high enough to prevent partisan manipulation but not so high as to freeze the constitutional order in forms that no longer serve the community's needs. For these provisions, a two-thirds parliamentary majority combined with upper house approval and a deliberation period should be sufficient.

This graduated approach to constitutional amendment, applied to Bangladesh's specific context, would suggest the following framework. The abolition of the caretaker government system, which destroyed a fundamental condition for democratic elections, should require the highest possible threshold for further change: supermajority parliamentary approval, upper house approval, and referendum ratification. The foundational principles of the state, currently entrenched by Article 7B, should be revisable through a supermajority parliamentary process combined with upper house approval, since they represent policy choices that the post-2024 political community has a legitimate interest in reconsidering. The specific institutional arrangements of the parliamentary system, including the structure of the legislature and the precise allocation of executive powers, should be revisable through the two-thirds plus upper house process that the July Charter proposes.

CHAPTER SEVEN: INTERNATIONAL CONSTITUTIONAL PERSPECTIVES ON AMENDMENT AND UNAMENDABILITY: LESSONS FOR BANGLADESH

7.1 Explicit Unamendability Provisions in Comparative Constitutional Law

Bangladesh is not alone in having constitutional provisions that purport to place certain features beyond the amendment power. A substantial number of the world's constitutions contain explicit unamendability provisions of various kinds, and the comparative experience with these provisions offers important lessons about their design, their effectiveness, and their jurisprudential treatment.

Germany's Basic Law contains the most celebrated eternity clause in the world: Article 79(3), which provides that no constitutional amendment may affect the division of the Federal Republic into states, the participation in principle of the states in legislation, or the principles laid down in Articles 1 and 20 of the Basic Law. Articles 1 and 20 contain the fundamental commitments to human dignity, democratic and social federal state organisation, the rule of law, and the separation of powers. The German eternity clause was designed specifically to prevent the repetition of the Weimar Republic's experience, in which the constitutional order was dismantled through the constitutional amendment procedure by a totalitarian movement.

The German eternity clause is widely regarded as a successful constitutional design. It protects provisions that are genuinely foundational, human dignity and the democratic rule-of-law state, rather than specific institutional arrangements that might legitimately need revision. It was drafted at a constitutional founding moment with broad democratic legitimacy. And it has been enforced by the Federal Constitutional Court, which has developed a sophisticated jurisprudence about what counts as a violation of the unamendable principles, without expanding the clause's scope in ways that would freeze the constitutional order.

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The contrast with Bangladesh's Article 7B is instructive. Germany's eternity clause protects abstract principles, human dignity and democratic statehood, leaving the specific institutional implementation of those principles open to revision. Bangladesh's Article 7B protects specific textual provisions, Parts I, II, and III of the constitution, including a vast array of specific policy choices that are far from foundational. The German clause is principle-based and flexible; the Bangladeshi clause is text-based and rigid. The German clause was enacted at a founding moment with broad democratic legitimacy; the Bangladeshi clause was enacted by a single party with its own partisan interests in mind. The German clause has been enforced in a way that protects its stated purposes; the Bangladeshi clause has created constitutional paralysis that prevents legitimate democratic reform.

Brazil's 1988 constitution contains another instructive example. Article 60(4) of the Brazilian constitution declares that no proposal for amendment may be considered if it tends to abolish the federal form of state, the direct, secret, universal, and periodic vote, the separation of governmental branches, or individual rights and guarantees. The Brazilian eternal clauses, like Germany's, protect abstract constitutional principles rather than specific textual provisions, and they have been interpreted by Brazil's Supreme Federal Tribunal in a way that prevents their use as instruments of constitutional paralysis while enforcing genuine protection of democratic fundamentals.

Italy's constitution contains an even more briefly stated provision: Article 139 provides simply that the republican form of government may not be subject to constitutional revision. This provision protected one specific institutional choice, the republic rather than the monarchy, in a context where the choice between republic and monarchy was the central constitutional question at the founding moment. It does not attempt to protect a comprehensive list of constitutional provisions against future revision.

These comparative examples converge on a design principle: legitimate unamendability provisions should protect abstract constitutional principles that are genuinely foundational rather than specific textual provisions that represent the policy choices of a particular constitutional generation; they should be narrow in scope rather than protecting large portions of the constitutional text; they should be enacted at genuine constitutional founding moments with broad democratic legitimacy; and they should be designed to prevent constitutional destruction rather than to freeze the constitutional order in a specific institutional form.

7.2 Judicial Enforcement of Unamendability: Global Trends

The judicial enforcement of constitutional unamendability is one of the most active areas in comparative constitutional law, and the global trend over the past decade has been toward increasing judicial willingness to strike down constitutional amendments that violate either explicit unamendability clauses or the implicit limits of the basic structure doctrine.

The Indian Supreme Court has continued to develop and apply the basic structure doctrine in a series of significant decisions over the past decade. In the Second Judges' Transfer Case and subsequent decisions on judicial appointments, the Court has demonstrated its willingness to use the basic structure doctrine to strike down constitutional amendments relating to judicial

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independence, striking down the National Judicial Appointments Commission Amendment of 2015 as violating the basic structure's protection of judicial independence. This decision was deeply controversial and generated significant debate about judicial overreach, but it also demonstrated the practical utility of the basic structure doctrine as a constraint on parliamentary manipulation of judicial appointments.

Pakistan's Supreme Court has developed its own variant of the basic structure doctrine, drawing on both Indian jurisprudence and the specific provisions of Pakistan's constitution. The Court has struck down constitutional amendments in several contexts, most notably in cases relating to the independence of the judiciary and the scope of fundamental rights. Pakistan's constitutional experience also illustrates the risks of the basic structure doctrine when applied in a politically charged environment: the Court's decisions on constitutional amendments have sometimes appeared to serve the political interests of particular factions within Pakistan's complex civil-military political landscape rather than reflecting principled constitutional analysis.

Sri Lanka's Constitutional Court has similarly been called upon to evaluate the constitutionality of constitutional amendments, with the Twenty-First Amendment's restoration of the Constitutional Council generating significant constitutional litigation about the relationship between the amendment and prior constitutional provisions. These South Asian examples collectively demonstrate that the judicial enforcement of limits on the amendment power is now a firmly established feature of the constitutional landscape in the region, with courts regularly being called upon to evaluate the constitutional validity of constitutional amendments.

7.3 The Constitutional Court for Bangladesh: An Unresolved Proposal

One of the more controversial proposals in the constitutional reform debate is the creation of a dedicated Constitutional Court, separate from the existing Supreme Court, to handle constitutional adjudication. The Constitutional Reform Commission has discussed this proposal, though its recommendations on the specific structure of constitutional adjudication are complex and contested.

The argument for a dedicated Constitutional Court draws on the German and South African models, where specialised constitutional courts have developed a distinctive constitutional jurisprudence that is institutionally separated from ordinary judicial work. A dedicated Constitutional Court would have several potential advantages for Bangladesh: it would allow for the development of specialised constitutional expertise among its judges, it would provide an institutional space for constitutional adjudication that is insulated from the political pressures affecting the ordinary judiciary, and it would create clearer institutional accountability for the resolution of fundamental constitutional disputes.

The argument against a dedicated Constitutional Court in the Bangladesh context focuses on several practical and theoretical concerns. The existing Supreme Court's Appellate Division already exercises constitutional jurisdiction and has developed a body of constitutional jurisprudence over five decades. Creating a new constitutional court would require decisions about its relationship to the existing courts, including whether it would have the power to review Appellate Division decisions or whether the Appellate Division would have the power to review

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Constitutional Court decisions. These jurisdictional questions are technically complex and politically sensitive. Moreover, a new court would require a new cadre of judges, the development of new institutional norms, and the establishment of new relationships with the bar and the legal community, all of which take time and are vulnerable to the same political pressures that have affected the existing Supreme Court.

The institutional design choice between a dedicated constitutional court and constitutional jurisdiction within the existing supreme court is ultimately a question without a universally correct answer. Both models have proven successful in different constitutional contexts. What matters more than the institutional structure is the quality of the appointment process for constitutional judges, the security of their tenure, the adequacy of their resources, and the constitutional culture within which they operate.

CHAPTER EIGHT: THE PATH FORWARD: A CONSTITUTIONALLY PRINCIPLED FRAMEWORK FOR IMPLEMENTING THE JULY CHARTER REFORMS

8.1 The Constitutional Pathway: Resolving the Article 142 Dispute

The constitutional deadlock of April 2026, in which the BNP government refuses to convene the Reform Council while opposition parties boycott parliament, requires resolution if Bangladesh's constitutional reform agenda is to move forward. The resolution must be constitutionally principled: it must respect the constraints of the existing constitutional order while creating a pathway for the fundamental constitutional changes that the July Charter mandates.

The constitution already provides a clear pathway for reform. Amendments under Article 142, followed, if deemed necessary, by a referendum, offer a constitutionally sound route to substantive change. What is needed now is not confrontation but deliberation. The Business Standard

The constitutionally sound pathway is essentially the following. First, the BNP government should introduce a constitutional amendment bill to remove or substantially modify Article 7B. This amendment should itself be the subject of maximum deliberation: it should be published well in advance, circulated to all political parties and civil society for comment, subjected to parliamentary committee examination with public hearings, and passed only after adequate deliberation. If the Supreme Court's reported invalidation of Article 7B is confirmed, this first step may be unnecessary, since Article 7B would already have been removed from the constitutional landscape by judicial decision.

Second, following the removal of Article 7B, the BNP government should introduce a constitutional amendment establishing the bicameral legislature, the revised amendment procedure requiring upper house approval, and the referendum requirement for the most fundamental constitutional changes. This meta-constitutional amendment establishes the framework within which subsequent amendments will be made, and it should be enacted before

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the substantive reform amendments to ensure that those amendments are made through the new procedure.

Third, having established the new bicameral legislature and the new amendment procedure, the government should then introduce the substantive constitutional amendment bills that implement the July Charter's specific reform proposals: the restoration of the caretaker government system, the revision of the foundational principles, the expansion of fundamental rights, the restructuring of executive power, and the other changes specified in the Charter. Each of these amendments should be subjected to the new procedure, requiring approval by both the National Assembly and the Senate (once the Senate is constituted) and, for the most fundamental changes, referendum ratification.

This pathway respects the constitutional constraints of Article 142 while providing a process that is more deliberative and more broadly legitimised than unilateral parliamentary action by the BNP's two-thirds majority. It also creates a precedent for constitutional amendment that is more protective of democratic values than the existing Article 142 process, establishing the institutional infrastructure for principled constitutional change in Bangladesh's future.

8.2 The Role of the Supreme Court in the Transition

The Supreme Court has an important role to play in Bangladesh's constitutional transition that goes beyond its existing role of adjudicating specific constitutional challenges. The Court's reported invalidation of Article 7B, if confirmed, has created a constitutional moment that requires careful judicial statesmanship: the Court must provide clear guidance on the constitutional landscape that exists in the absence of Article 7B, the scope of the remaining constraints on the amendment power under the basic structure doctrine, and the specific provisions of the constitutional text that remain subject to that constraint.

A clear judicial statement on these questions would provide constitutional clarity that the political process currently lacks. Without such clarity, political actors will continue to make conflicting claims about what is and is not constitutionally permissible, creating conditions for continued deadlock. The Court's authority to provide this clarity derives from its constitutional function as the guardian of the constitution, and the exercise of that authority in the current circumstances is not judicial overreach but judicial responsibility.

The Court should also be attentive to the risk that its decisions will be perceived as politically motivated, either as supporting the BNP against the opposition or as supporting the opposition against the BNP. Constitutional decisions in a charged political environment are always vulnerable to this perception, and the Court must take extraordinary care to ground its reasoning in constitutional principle rather than political preference. The appointment of judges through a genuinely independent process, as proposed by the July Charter through the NCC mechanism, is essential for building the institutional credibility that allows the Court to exercise its constitutional function without being dismissed as a partisan actor.

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8.3 Civil Society's Constitutional Role: Deliberation Beyond Parliament

The resolution of Bangladesh's constitutional reform impasse cannot be achieved by parliament and the courts alone. Civil society, including academia, the press, professional associations, and citizen organisations, must play an active role in generating the deliberation and accountability that formal institutions cannot fully provide.

The constitutional education function of civil society is particularly important in this context. Many Bangladeshi citizens are aware that constitutional reform is happening, but relatively few understand the specific constitutional disputes at issue: the meaning of Article 7B, the requirements of Article 142, the concept of the basic structure doctrine, or the institutional design choices involved in the proposed reforms. Public constitutional literacy is a prerequisite for meaningful democratic participation in constitutional change, and civil society organisations, working with universities, media institutions, and community organisations, can provide the constitutional education that formal institutions cannot.

The accountability function of civil society is equally important. Political parties that have committed to the July Charter's reform agenda but are failing to implement it should be held to account by organised civil society. The press should investigate and report on the specific ways in which the reform agenda is being advanced or stalled. Academic institutions should produce rigorous analysis of the constitutional choices being made. Professional associations, particularly the bar associations whose members will be directly affected by the quality of constitutional institutions, should engage in advocacy for principled constitutional reform.

8.4 The Democratic Consolidation Challenge: Amendment Reform and the Long View

The constitutional amendment reform debate of 2026 is, in the deepest sense, a debate about whether Bangladesh can achieve democratic consolidation: the transition from a democratic system that is formally present but substantively fragile to one that is genuinely robust, self-sustaining, and capable of producing peaceful transitions of power across multiple cycles of electoral competition.

Political scientists have identified several conditions associated with democratic consolidation: a constitutional framework that is respected by major political actors, competitive elections that produce credible results, independent accountability institutions that constrain executive power, a political culture that regards democratic competition as the legitimate mechanism for resolving political disputes, and civil society that is active, organised, and capable of holding power to account. Bangladesh's constitutional reform agenda is addressing several of these conditions simultaneously, but the success of the agenda depends on political will that must be sustained across multiple governments and multiple electoral cycles.

The reform of the constitutional amendment procedure, specifically the creation of higher barriers to constitutional change through bicameral requirements and referendum provisions, is directly relevant to democratic consolidation. Democracies that are more constitutionally stable, where the fundamental rules of the political game are harder to change unilaterally, tend to produce more consistent patterns of competitive democratic politics because the major political

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actors cannot manipulate the rules whenever they gain a temporary advantage. The July Charter's proposal to increase the difficulty of constitutional amendment is therefore not merely a technical institutional reform but a contribution to the deeper project of democratic consolidation.

The ultimate test of Bangladesh's constitutional reform agenda is simple but demanding: will the constitutional changes produce a political system in which no single party or leader can concentrate unchecked power, in which elections are genuinely free and competitive, in which accountability institutions function independently, and in which citizens' rights are genuinely protected against governmental violation? This test cannot be passed through constitutional text alone; it requires the combination of good institutional design, genuine political will, active civil society engagement, and the slow cultivation of a constitutional culture that treats these standards not as aspirations but as non-negotiable requirements of legitimate government.

Bangladesh has, in the aftermath of the July 2024 uprising, a constitutional moment of extraordinary potential. The question of how the amendment power is designed, constrained, and exercised in the next 180 days will determine whether that potential is realised or squandered. The stakes could not be higher, and the responsibility could not be more clearly distributed: among the political leaders who must show the maturity to implement reform that limits their own power, the judges who must provide constitutional guidance with independence and wisdom, and the citizens whose democratic demands created this constitutional moment and whose continued engagement is the only reliable guarantee of its fulfillment.

SELECTED BIBLIOGRAPHY AND FURTHER READING FOR PART TEN

The study of constitutional amendment theory and practice in Bangladesh requires engagement with both the primary legal sources and the comparative theoretical literature. The following works are recommended as essential reading.

On the general theory of constitutional amendment, Yaniv Roznai's Unconstitutional Constitutional Amendments: The Limits of Amendment Powers (Oxford University Press, 2017) is the definitive treatment of the judicial doctrine of unconstitutional constitutional amendments and is essential for understanding the Bangladesh basic structure doctrine in comparative perspective. Richard Albert's Constitutional Amendments: Making, Breaking and Changing Constitutions (Oxford University Press, 2019) provides a comprehensive framework for understanding different modes of constitutional change, including the constitutional handcuffs concept. Jon Elster's Ulysses and the Sirens (Cambridge University Press, 1979) and its sequel Ulysses Unbound (Cambridge University Press, 2000) provide the foundational philosophical analysis of constitutional pre-commitment that underlies the theory of unamendability.

On abusive constitutionalism, David Landau's foundational article "Abusive Constitutionalism" (2013) 47 UC Davis Law Review 189 and Rosalind Dixon and David Landau's "Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment" (2015) 13 International Journal of Constitutional Law 606 are essential reading. Kim Lane

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Scheppele's work on "autocratic legalism" provides further analytical tools for understanding constitutional manipulation through formally constitutional procedures.

On Bangladesh specifically, Kawser Ahmed's "Revisiting Judicial Review of Constitutional Amendments in Bangladesh: Article 7B, the Asaduzzaman Case, and the Fall of the Basic Structure Doctrine" (2023) Israel Law Review is the most rigorous legal analysis of Article 7B and its jurisprudential implications. Md. Isfar Sarker's "A Shift from Constructive Unamendability to Codified Petrification" (2025) South Asian Law Review Journal 19 applies the constitutional dismemberment framework to the Fifteenth Amendment with particular analytical precision. Arfan Ahmed's "The Desirability of Application of the Basic Structure Doctrine in Bangladesh" (2024) 15 Beijing Law Review 1528 provides a comprehensive survey of the doctrine's development and application.

For the most recent analysis of the 2025 to 2026 constitutional transition, Muhammad Ekramul Haque and Sumit Bisarya's "July Charter and Constitutional Reforms in Bangladesh" (International IDEA, ConstitutionNet, December 2025) is the most comprehensive analysis of the July Charter's constitutional implications. Sara Hossain's "Bangladesh's Referendum and Reforms: The Need to Return to a Constitutional Process" (International IDEA, ConstitutionNet, March 2026) provides critical analysis of the referendum's constitutional legitimacy. Faisal Mahmud's reporting for Asia Times, "Bangladesh Reform Drive Hits Early Constitutional Roadblock" (March 2026), documents the current political and constitutional deadlock with important primary source detail. Md. Ibrahim Khalilullah's SSRN paper "Popular Will and Constitutional Reform in Bangladesh" (May 2025) examines the intersection of popular sovereignty and formal amendment procedures with rigorous academic analysis.

For comparative perspectives, the literature on South African post-apartheid constitutional adjudication, particularly on the Constitutional Court's role in enforcing Chapter 9 institutions' independence, and the German Federal Constitutional Court's eternity clause jurisprudence, are particularly valuable. Paul Craig and Grainne de Burca's EU Law (Oxford University Press, 7th edition, 2020) provides context for understanding the role of fundamental rights as constitutional constraints in multi-level constitutional systems.

End of Part Ten

PART ELEVEN

THE CONSTITUTION AND THE WORLD: INTERNATIONAL LAW, TREATY OBLIGATIONS, TRANSNATIONAL JUSTICE, AND THE CONSTITUTIONAL FRAMEWORK OF BANGLADESH'S ENGAGEMENT WITH THE GLOBAL LEGAL ORDER

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PREFACE TO PART ELEVEN

Every modern constitution exists within two legal orders simultaneously. It is, on one hand, the supreme law of its own political community, the foundational document around which the domestic legal system is organised and from which all governmental authority derives. On the other hand, it exists within an international legal order of treaties, customary international law, judicial decisions of international tribunals, and evolving norms of universal human rights that no state can entirely ignore, and that an increasing number of states have chosen to incorporate directly into their constitutional frameworks. The relationship between these two legal orders: how they interact, which prevails when they conflict, how international norms are given domestic legal effect, and how constitutional provisions shape and are shaped by international legal commitments: is one of the most intellectually demanding and practically consequential questions in contemporary constitutional jurisprudence.

Bangladesh's constitution sits in a particularly complex position within this dual legal order. It was drafted in 1972 with explicit reference to the principles of international human rights law, specifically the Universal Declaration of Human Rights and the emerging International Bill of Rights, and it incorporates many of the values and protections that international human rights law had by then crystallised into treaty form. Bangladesh is a state party to most of the core international human rights treaties. It has a distinctive and consequential relationship with the International Criminal Court, whose jurisdiction over alleged crimes against the Rohingya was established precisely because Bangladesh, as an ICC member state, provided the territorial nexus for a jurisdiction that would otherwise have been unavailable. And Bangladesh's own International Crimes Tribunal, created to address atrocities committed during the 1971 Liberation War and recently expanded to address the crimes of the July 2024 uprising, raises profound questions about the relationship between domestic criminal jurisdiction and the international standards of fair trial, independence, and due process that international law demands.

The post-2024 constitutional reform moment has brought these questions into sharp relief. The Yunus interim government, within days of assuming power, acceded to the International Convention for the Protection of All Persons from Enforced Disappearance, the one major human rights treaty to which Bangladesh had not previously been party. It invited the UN High Commissioner for Human Rights to conduct an independent fact-finding mission into the July uprising killings. It established a Commission of Inquiry on Enforced Disappearances. It amended the International Crimes (Tribunals) Act to expand the tribunal's jurisdiction to cover crimes committed after 1971. And it promulgated, to significant international criticism, a draft Enforced Disappearance Prevention and Redress Ordinance whose provisions were found by international human rights organisations to fall short of the international standards that Bangladesh's treaty obligations require.

These developments expose the central tension in Bangladesh's relationship with international law: between the aspiration to align the domestic legal order with international human rights standards, expressed in treaty ratification and institutional reform, and the reality of domestic legal structures, political pressures, and cultural norms that resist full implementation of those standards. Bangladesh is what international law scholars call a "dualist" state: its constitutional

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design treats international law as a separate legal order that does not automatically become part of domestic law upon ratification, requiring instead specific legislative implementation before it can be applied by domestic courts. The constitutional design leaves no choice but dualism, which for the purposes of implementation regards international law as separate from domestic law, for Bangladesh to follow. SSRN This dualist framework creates a systematic implementation gap between the international obligations Bangladesh has accepted and the domestic legal reality that citizens and courts experience.

This part examines the constitutional framework of Bangladesh's relationship with international law in all its complexity. It begins with the philosophical foundations of the monism-dualism debate and its specific resolution in Bangladesh's constitutional design. It then examines Bangladesh's treaty obligations under the major international human rights instruments, analysing both the specific provisions of each treaty and the gap between Bangladesh's formal commitments and its implementation record. It devotes extended attention to the extraordinary legal dimensions of the ICC situation in Bangladesh/Myanmar, examining how Bangladesh's role as the territorial nexus for ICC jurisdiction over the Rohingya crisis raises profound questions about the relationship between international criminal jurisdiction and national sovereignty. It analyses the International Crimes Tribunals: their constitutional basis, their compliance with international fair trial standards, and the challenges posed by their expanded jurisdiction post-2024. And it concludes with a comprehensive examination of the constitutional reform proposals for Bangladesh's engagement with international law, asking what changes are needed to transform the gap between formal commitment and actual implementation into a genuine alignment of constitutional and international legal order.

CHAPTER ONE: MONISM, DUALISM, AND THE CONSTITUTIONAL STATUS OF INTERNATIONAL LAW: FOUNDATIONAL PHILOSOPHY AND BANGLADESH'S POSITION

1.1 The Monism-Dualism Debate: A Foundational Question of Constitutional Architecture

The relationship between international law and domestic legal systems has been one of the central questions of constitutional theory and international legal philosophy for more than a century. The two classical positions in this debate, monism and dualism, represent fundamentally different answers to a question of profound practical significance: when a state enters into an international legal obligation, what happens within its domestic legal order?

Monism, associated in its most rigorous philosophical form with the jurisprudence of Hans Kelsen, holds that international law and domestic law form a single unified legal order, with international law occupying the hierarchically superior position. On this view, when a state ratifies an international treaty, the treaty's provisions immediately become part of the domestic legal order without the need for any further legislative act of transformation or incorporation. International law can be directly applied by domestic courts. Where there is a conflict between domestic law and international law, international law prevails. The monist position has its purest expression in the constitutional systems of the Netherlands, whose constitution explicitly

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provides that provisions of international treaties binding on all persons shall have effect within the kingdom after they have been published, and that statutory regulations in force within the kingdom shall not be applied if such application is in conflict with provisions of such treaties.

Dualism, associated with the work of Heinrich Triepel and Dionisio Anzilotti, holds that international law and domestic law are entirely separate legal orders, operating on different foundations, addressed to different subjects, and producing obligations of different kinds. On the dualist view, international law binds states in their relations with each other but does not automatically become part of domestic law. For international obligations to have domestic legal effect, they must be transformed into domestic law through specific legislative act. The treaty itself creates only international obligations between states; it does not create rights or obligations within the domestic legal order until parliament enacts implementing legislation that incorporates the treaty's provisions into domestic law. The United Kingdom's historical constitutional tradition is the paradigmatic dualist system, and it profoundly influenced the constitutional design of the former British colonies, including Bangladesh.

Between these polar positions, a range of intermediate approaches has developed in comparative constitutional practice. Many constitutional systems adopt what might be called "modified monism" or "constitutional monism," in which treaties become part of domestic law automatically upon ratification but are subject to constitutional limitations and may be overridden by subsequent domestic legislation. The United States provides an interesting intermediate case: the Supremacy Clause of the US Constitution makes treaties the supreme law of the land, suggesting a monist approach, but the US courts have developed a distinction between "self-executing" treaties that can be directly applied by courts and "non-self-executing" treaties that require implementing legislation, effectively creating a functional dualism within a formally monist constitutional text.

A third category, which might be called "creeping monism," has been identified in several constitutional systems that began with a formally dualist framework but have developed through judicial interpretation toward a position in which international law has increasing domestic legal relevance, even if it does not automatically override domestic legislation. India provides a striking example: the Indian constitution does not explicitly adopt a monist position, but the Supreme Court of India has consistently held that in interpreting domestic law, courts should prefer interpretations that are consistent with India's international obligations, and that human rights provisions of international treaties can be used to inform the content of constitutional rights even where they have not been explicitly incorporated by legislation. This judicial approach has progressively brought India toward a de facto modified monism in the area of human rights, even without formal constitutional amendment.

1.2 Bangladesh's Constitutional Framework: The Architecture of Dualism

The Bangladesh constitution's approach to international law reflects its British constitutional inheritance, the historical moment of its drafting in 1972 when the dualist approach was the overwhelming norm in post-colonial constitutional design, and the specific political and intellectual choices made by its framers.

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Article 25 of the Bangladesh constitution is the primary provision dealing with international relations. It provides that the state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall strive for the renunciation of the use of force in international relations and for general and complete disarmament, and shall support the right of every people to self-determination. Article 25(2) specifically provides that the state shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another.

The language of Article 25 is aspirational rather than operative. It commits Bangladesh to respecting international law and treaty obligations in its conduct of international relations, but it does not specify any mechanism through which those obligations become part of the domestic legal order. The phrase "shall endeavour to foster respect" in clause (2) is plainly programmatic rather than legally binding in its domestic application: it creates a political commitment without creating a justiciable legal obligation.

The implications of this constitutional design were examined in depth by Kawser Ahmed in his 2023 analysis, in which he concluded after reviewing Constituent Assembly debates, constitutional text, judicial decisions, and state practices that the constitutional design leaves Bangladesh no choice but dualism. It is concluded that the constitutional design leaves no choice but dualism, which for the purposes of implementation regards international law as separate from domestic law, for Bangladesh to follow. SSRN Ahmed also identified what he characterises as "creeping monism" in the judicial decisions of the Supreme Court of Bangladesh, which has increasingly cited international human rights norms as interpretive guides for the content of constitutional rights, even without formally abandoning the dualist framework.

The practical consequences of Bangladesh's dualist framework are profound and must be understood clearly. When Bangladesh ratifies an international treaty, the treaty creates binding obligations on Bangladesh as a state in its international relations, but these obligations do not automatically become part of Bangladeshi law. For a treaty's provisions to be enforceable by individuals in Bangladeshi courts, parliament must enact legislation that incorporates those provisions into domestic law. Until such legislation is enacted, the treaty obligation remains operative only at the international level: Bangladesh may face international consequences for violating it, including condemnation by treaty monitoring bodies, but individuals cannot invoke the treaty's provisions before domestic courts.

Bangladesh is a dualist country, and there was no domestic legislation enacted to give full effect to the Convention in the domestic system. Amnesty International This observation, made specifically in the context of Bangladesh's accession to the International Convention against Enforced Disappearance, illustrates the implementation gap precisely. The convention creates international obligations on Bangladesh, but without implementing legislation, enforced disappearance victims cannot invoke the Convention's specific protections before Bangladeshi courts.

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1.3 The Creeping Monism in Bangladesh's Judicial Practice

Despite the formal dualism of Bangladesh's constitutional framework, the Supreme Court has developed through its jurisprudence an increasingly sophisticated engagement with international human rights norms that has the practical effect of giving those norms domestic legal relevance without formally abandoning the dualist approach. This judicial development represents the "creeping monism" that Ahmed identified and is one of the most significant trends in Bangladesh's constitutional jurisprudence.

The judicial engagement with international law in Bangladesh has proceeded along several distinct pathways. The first is the use of international treaty provisions as interpretive guides for the meaning of constitutional rights. When interpreting the scope and content of constitutional rights under Part III of the constitution, particularly in the context of public interest litigation, the High Court Division has increasingly cited provisions of the ICCPR, the ICESCR, and other treaties to inform its understanding of what the constitutional guarantee requires. The technique is similar to what the Indian Supreme Court has developed: the treaty provision does not override domestic law, but it informs the interpretation of what the constitutional right demands.

The second pathway is the invocation of customary international law. Unlike treaty law, customary international law, understood as the practice of states followed from a sense of legal obligation (opinio juris), is generally regarded in common law systems as automatically part of domestic law without the need for legislative transformation, unless it conflicts with a specific domestic statute. The Bangladesh Supreme Court has on several occasions invoked principles of customary international human rights law in its constitutional reasoning, treating norms that have achieved the status of customary law as part of the applicable law in constitutional rights cases.

The third pathway is the citation of decisions of international human rights treaty bodies, particularly the UN Human Rights Committee and the UN Committee against Torture, as persuasive authority for the interpretation of constitutional rights. These decisions are not legally binding in the domestic system in the strict sense, but the Supreme Court has in several cases treated them as significant inputs into the constitutional analysis, particularly where the international body has addressed questions about the scope and limitations of rights that are guaranteed in parallel terms by both the international treaty and the Bangladesh constitution.

The gradual expansion of these judicial techniques represents a functional shift toward greater international law integration, even within the formal constraints of the dualist constitutional framework. It also creates a significant accountability mechanism: even where domestic legislation has not been enacted to implement a treaty, the Supreme Court can use the treaty as an interpretive guide that gives domestic legal relevance to the international obligation, creating a judicial pathway for international standard enforcement that does not depend on legislative action.

The post-2024 constitutional reform proposals include discussions about whether Bangladesh's approach to international law should be formally modified in the direction of monism, at least in the area of human rights. The Constitutional Reform Commission's proposals to expand the fundamental rights catalogue and make it more comprehensive raise questions about the

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relationship between the new constitutional rights and the parallel provisions of international treaties. If the expanded constitutional rights framework is interpreted in light of the corresponding international treaty provisions, the effect would be a substantial degree of de facto monism in the human rights area, even without formal constitutional amendment of the dualist framework.

CHAPTER TWO: BANGLADESH'S TREATY OBLIGATIONS: A SYSTEMATIC ANALYSIS OF INTERNATIONAL COMMITMENTS AND DOMESTIC IMPLEMENTATION

2.1 The International Bill of Rights in Bangladesh: ICCPR and ICESCR

Bangladesh ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1998, more than two and a half decades after their adoption by the UN General Assembly in 1966. The relatively late ratification, by comparison with many other post-colonial democracies, reflected the complex domestic politics of the period and the reluctance of successive governments to accept the level of international scrutiny that treaty ratification entails.

The Bangladesh Constitution has been directly influenced by the UN's model of the International Bill of Rights. At that time, the framers of the Constitution followed the UN's path of splitting up the various human rights provisions into two broad groups, ESCR and CPR, by dividing them into FPSP and FR and placing them in Parts II and III of the Constitution, respectively. Thus, Part II of the Constitution largely reflects the provisions in ICESCR, while Part III reflects those in ICCPR. PubMed Central

This structural parallel between the Bangladesh constitutional rights framework and the International Bill of Rights creates both opportunities and complications for the constitutional-international law relationship. The opportunity is that the interpretive jurisprudence of the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights is directly relevant to the interpretation of corresponding constitutional provisions in Bangladesh, since the rights are formulated in parallel terms and reflect the same foundational commitments. The complication is that the parallel structure obscures important differences between the constitutional provisions and the treaty provisions, particularly in the area of permissible limitations.

The ICCPR's limitation clauses are, in several respects, more precisely calibrated than the corresponding provisions of the Bangladesh constitution. Article 19 of the ICCPR, protecting freedom of expression, permits limitations only where prescribed by law and necessary for respect of the rights or reputations of others, protection of national security or public order, or protection of public health or morals. The "necessary" standard in the ICCPR limitation clause has been interpreted by the Human Rights Committee to require that limitations be proportionate: the restriction must not be broader than necessary to achieve the legitimate aim. Article 39 of the Bangladesh constitution, the corresponding provision, permits restrictions in the

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interests of a broad range of vague purposes including "friendly relations with foreign states" and "decency or morality," without any proportionality requirement in the constitutional text.

The exclusion clauses of the Constitution limit the enforcement of CPR. For example, Article 39 of the Constitution states some exceptions regarding the enjoyment of the right: "in the interests of the security of the state, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offense." The ICCPR, in its corresponding provisions in Articles 19 and 20, impose limitations on grounds of "respecting the rights or reputations of others, protecting national security or public order (ordre public), or public health or morals." PubMed Central

This difference in the precision and stringency of limitation clauses is not merely academic. It creates a space in which the government can restrict expression in ways that the ICCPR does not permit but that the constitutional text does not clearly prohibit. The Digital Security Act, subsequently renamed the Cyber Security Act, exploited precisely this space: its restrictions on online expression were framed in language that referenced the broad constitutional limitation clauses, even though they plainly violated the ICCPR's proportionality requirement for restrictions on freedom of expression.

The gap between Bangladesh's ICCPR obligations and its domestic implementation is documented in detail in the Human Rights Committee's Concluding Observations on Bangladesh's periodic reports. Key areas of concern identified by the Committee have consistently included: the use of preventive detention under the Special Powers Act without adequate judicial oversight; restrictions on freedom of expression and the press; limitations on the independence of the judiciary; the failure to effectively investigate and prosecute extrajudicial killings and enforced disappearances; and discrimination against religious minorities and indigenous peoples. The Committee's recommendations in each of these areas reflect the gap between Bangladesh's ICCPR commitments and its domestic practice.

The ICESCR's implementation record in Bangladesh is similarly mixed. Bangladesh has made significant progress on several economic and social indicators, including in the areas of primary education enrolment, child mortality reduction, and women's economic participation. But the gap between the constitutional aspirations of Part II, which reflects the ICESCR's framework of progressive realisation of economic and social rights, and the reality of persistent poverty, inadequate healthcare, environmental degradation, and labour rights violations remains substantial. The question of whether economic and social rights should be made justiciable, a question that the post-2024 constitutional reform proposals address directly by proposing to merge the directive principles of Part II with the fundamental rights of Part III, is directly relevant to Bangladesh's ICESCR obligations: making economic and social rights justiciable would significantly strengthen their domestic enforcement.

2.2 The Convention against Torture: Implementation Failures and the Post-2024 Reckoning

Bangladesh ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in 1998, undertaking binding international legal obligations to prohibit torture absolutely, to criminalise it under domestic law, to investigate allegations of torture, to

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prosecute perpetrators, and to provide remedies for victims. The Convention's prohibition on torture is non-derogable: it applies even in emergency situations and cannot be suspended under any circumstances.

The implementation of Bangladesh's CAT obligations has been deeply deficient. Torture by law enforcement agencies, particularly the police, the Rapid Action Battalion, and the Detective Branch, has been extensively documented by domestic and international human rights organisations over many years. The National Human Rights Commission has received thousands of complaints of torture in custody, but its ability to investigate and obtain redress has been severely limited. The official Criminal Procedure Code provides for magistrates to examine the condition of persons in police custody, a safeguard against torture, but this provision has been poorly implemented in practice.

The RAB's record of extrajudicial killings, enforced disappearances, and torture during the AL years has been among the most extensively documented human rights problems in Bangladesh's recent history. In its preliminary report, the Commission of Inquiry announced that it recorded 1,676 complaints, and that the whereabouts of some 200 victims remain unknown. It described the "systematic design" of enforced disappearances, mostly targeting political opponents, and uncovered grim evidence of torture and inhumane conditions at secret detention sites operated by Bangladeshi security agencies. Human Rights Watch

The United States imposed sanctions on RAB and several of its senior officers in December 2021, citing credible evidence of serious human rights violations including extrajudicial killings, torture, and enforced disappearances. This was the most significant international accountability measure taken against Bangladesh's security forces and reflected the depth of international concern about the systematic character of the abuses.

The post-2024 reform agenda has attempted to address the CAT implementation gap through several mechanisms. The Commission of Inquiry on Enforced Disappearances represents an important institutional response, but its mandate and the legal framework for acting on its findings have been complicated by the political dynamics of the transition. The draft Enforced Disappearance Prevention and Redress Ordinance of 2025 was intended to give domestic legal effect to Bangladesh's recently acceded international obligations under the Convention against Enforced Disappearance, but it attracted serious criticism from international human rights organisations for falling short of international standards. The draft Ordinance's definition of enforced disappearances is not compatible with the Convention, among other serious flaws. We are alarmed by reports that the draft Ordinance is progressing without adequate public consultations. Human Rights Watch

The failure of the draft Ordinance to meet international standards illustrates the implementation gap in concrete and specific terms. The Convention against Enforced Disappearance defines enforced disappearance as the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups acting with the authorisation, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person. The draft Ordinance's definition was narrower, excluding cases of enforced disappearance carried out in a "widespread

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or systematic manner," which would have left the most serious cases to the jurisdiction of the International Crimes Tribunal. This exclusion was specifically criticised by international human rights organisations as creating a perverse incentive: the most serious patterns of enforced disappearance would be excluded from the specific accountability mechanism designed to address them.

Extending the application of the death penalty in Bangladesh under this legislation would conflict not only with the constitutional guarantee of the right to life, but also with Bangladesh's obligations under international law, specifically Article 6 of the ICCPR, to which Bangladesh is a state party. The UN Human Rights Committee clearly expects state parties to progress towards full abolition and prohibits them from extending the death penalty to offences not subject to capital punishment at the time of ratification. Human Rights Watch

2.3 CEDAW and Gender Justice: The Persistent Gap Between Commitment and Reality

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Bangladesh in 1984 with reservations to Articles 2 and 16(1)(c) relating to equality in marriage and family law, represents one of the most significant and most contested areas of Bangladesh's international human rights obligations. The reservations to CEDAW are themselves constitutionally problematic: they reflect the position that Islamic personal law, as applied through the courts in matters of marriage, divorce, and inheritance, takes precedence over the equality requirements of the Convention, a position that is in tension with the constitution's own guarantee of equality and non-discrimination.

The justification for the reservations rests on the argument that Articles 2 and 16(1)(c) of CEDAW, which require equality in marriage and family relations, conflict with the provisions of Islamic personal law as applied in Bangladesh, specifically the provisions of the Muslim Family Laws Ordinance 1961, which while more progressive than classical fiqh on several points does not achieve formal equality between men and women in matters of divorce and inheritance. The reservations have been criticised by CEDAW treaty bodies, by international human rights organisations, and by domestic feminist scholars and advocates as incompatible with the spirit and purpose of the Convention and as reflecting the precedence of religious law over constitutional equality guarantees.

The existing stand of Bangladesh regarding Clause 2 and 16-1(c) has made it impossible to fully establish women's right in the country. This paper attempted to make a case for the explanation of fully implementing CEDAW in Bangladesh, using the Constitution of Bangladesh. The Constitution of Bangladesh clearly identifies equal rights for both men and women, whereby non-ratification of two clauses of the CEDAW charter is clearly unjustifiable. Academia.edu

The constitutional dimensions of the CEDAW reservations are significant and have been insufficiently explored in the scholarly literature. If the constitution guarantees equality between men and women in Article 28, and if the CEDAW reservations rest on the claim that Islamic personal law requires departures from equality in marriage and family relations, then there is a potential constitutional argument that the reservations reflect an unconstitutional surrender of the equality guarantee in favour of religious law. The Supreme Court's consistent reluctance to

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address the relationship between Islamic personal law and the constitutional equality guarantee has left this question unresolved.

The post-2024 constitutional reform proposals have not directly addressed the CEDAW reservations, which is a significant omission. A constitutional reform agenda that genuinely aims to strengthen gender equality, as the July Charter's proposals do, should include a commitment to withdrawing the CEDAW reservations as part of the broader transformation of the constitutional framework for gender equality. This commitment would have both substantive significance, removing a formal legal barrier to full CEDAW compliance, and symbolic significance, demonstrating Bangladesh's genuine commitment to international equality standards rather than its use of international treaty ratification as a legitimating gesture without substantive implementation.

The broader implementation of CEDAW in Bangladesh has produced mixed results. Several legislative reforms, including the Prevention of Oppression against Women and Children Act, the Domestic Violence (Prevention and Protection) Act 2010, and various judicial decisions protecting women's rights in employment and public life, reflect positive progress. But the persistent gender gap in formal employment, the high rate of early marriage despite legal prohibitions, the inadequate implementation of the dowry prohibition laws, and the continuing criminalisation of marital rape in the Bangladesh Penal Code all represent significant failures of CEDAW implementation.

2.4 The Convention on the Rights of the Child and Labour Standards

Bangladesh ratified the Convention on the Rights of the Child in 1990, and its implementation record in this area has been the subject of regular review by the CRC Committee. Bangladesh has made remarkable progress on several child rights indicators: under-five mortality has fallen dramatically since independence, primary school enrolment rates have increased substantially, and child immunisation coverage has improved significantly. These achievements represent genuine advances in the realisation of children's rights as defined by the CRC.

Significant implementation gaps remain, however. Child labour, while declined in recent decades, persists at significant levels, particularly in hazardous industries. Child marriage remains prevalent, with Bangladesh having one of the highest rates of child marriage in the world despite a legal minimum age of eighteen for women. The Child Marriage Restraint Act 2017 notably included a controversial provision allowing child marriage in "special circumstances" with parental consent and judicial approval, a provision widely criticised by civil society and international human rights bodies as undermining the minimum age standard rather than enforcing it.

The garment industry, which accounts for a large proportion of Bangladesh's export earnings and is central to its economic development strategy, has been a particularly significant site of children's and workers' rights concerns. Child labour in informal supply chains feeding the formal garment sector has been documented, along with violations of adult workers' rights to organise, to safe working conditions, and to fair wages. Bangladesh's international obligations under these conventions include promoting equality at the workplace and prohibiting

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discrimination on the basis of sex or pregnancy. Women have a right to a workplace free of sexual harassment and states are duty-bound to take preventive steps and ensure access to redress. Human Rights Watch Bangladesh has ratified the core ILO conventions on freedom of association and collective bargaining, but their implementation in the garment sector has been consistently deficient, with workers who attempt to organise facing dismissal, violence, and criminal charges.

CHAPTER THREE: THE ICC, INTERNATIONAL CRIMINAL LAW, AND BANGLADESH'S CONSTITUTIONAL ENGAGEMENT WITH TRANSNATIONAL JUSTICE

3.1 Bangladesh and the International Criminal Court: The Extraordinary Jurisdictional Story

Bangladesh's relationship with the International Criminal Court is one of the most extraordinary in the history of international criminal law. Bangladesh ratified the Rome Statute in 2010, becoming party to the ICC. The consequences of this ratification were not, at the time, fully appreciated, and they have since produced one of the most innovative and consequential extensions of ICC jurisdiction in the Court's history.

The Rohingya crisis, which reached its most acute phase with the Myanmar military's brutal clearance operations of August and September 2017 that drove approximately 700,000 Rohingya from their homes in Rakhine State into Bangladesh, created an extraordinary jurisdictional puzzle. Myanmar is not a party to the Rome Statute and therefore cannot in principle be subject to ICC jurisdiction, since the ICC's jurisdiction in the absence of a Security Council referral is limited to crimes committed on the territory of member states or by nationals of member states. The crimes committed by the Myanmar military were committed on Myanmar's territory by Myanmar nationals: it seemed, at first analysis, that the ICC had no jurisdiction.

The ICC Prosecutor's office developed a creative jurisdictional argument that ultimately prevailed. The deportation of the Rohingya from Myanmar into Bangladesh was a crime against humanity under Article 7(1)(d) of the Rome Statute, and crucially, deportation as a crime against humanity is completed not where the persons are deported from but where they are deported to, since the crime requires their crossing of an international border. Since the Rohingya were deported into Bangladesh, and Bangladesh is an ICC member state, the crime was completed on the territory of a member state. The ICC therefore had jurisdiction over at least the deportation element of the crimes.

On April 9, 2018, the then Prosecutor of the International Criminal Court Fatou Bensouda made a request to the ICC under article 19(3) of the Statute of the ICC (Rome Statute) seeking advice on whether it could exercise jurisdiction over allegations that the Rohingya people were being deported out of Myanmar into Bangladesh. American Bar Association Pre-Trial Chamber III of the ICC ruled in September 2018 that it did indeed have jurisdiction over the alleged deportation, a ruling that opened the door to a full ICC investigation.

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On 27 November 2024, ICC Prosecutor Karim A.A. Khan KC filed an application for a warrant of arrest for Senior General and Acting President Min Aung Hlaing, Commander-in-Chief of the Myanmar Defence Services, for the alleged crimes against humanity of deportation and persecution of the Rohingya, committed in Myanmar, and in part in Bangladesh. The application is pending before Pre-Trial Chamber I. International Criminal Court

This application for an arrest warrant against the head of state of a neighbouring country, a country with which Bangladesh shares a complex border and with which it must maintain diplomatic relations regardless of the legal proceedings, creates significant constitutional and diplomatic challenges for Bangladesh. The Rome Statute imposes a duty on state parties to cooperate with the ICC, including in the execution of arrest warrants. If the Pre-Trial Chamber issues a warrant for Min Aung Hlaing and he were to travel to Bangladesh, Bangladesh would be under an international legal obligation to arrest him and surrender him to the ICC. This obligation would put Bangladesh in direct conflict with Myanmar and with China, which exercises significant political influence over both countries.

3.2 The Jurisdictional Innovation and Its Implications for Bangladesh's Constitutional Framework

The ICC's exercise of jurisdiction over the Rohingya situation through Bangladesh's territorial nexus raises profound constitutional questions about the relationship between Bangladesh's international treaty obligations under the Rome Statute and its domestic constitutional order.

The most immediate constitutional question concerns the status of the Rome Statute in Bangladesh's domestic legal order. Since Bangladesh is a dualist state, the Rome Statute does not automatically become part of domestic law upon ratification. For the ICC's co-operation obligations to be enforceable by domestic courts and binding on domestic authorities, Bangladesh would need to enact implementing legislation. Bangladesh has not enacted a comprehensive Rome Statute implementation Act of the kind that countries such as Canada, South Africa, Kenya, and many others have enacted to give domestic legal effect to their Rome Statute obligations.

The absence of implementing legislation creates a gap in Bangladesh's capacity to cooperate with the ICC. Bangladesh's law enforcement agencies, operating under domestic statutory authority, may not have clear legal authority to execute an ICC arrest warrant without domestic legislation that specifically confers this authority. The evidentiary cooperation that the ICC investigation requires, including the collection and transmission of witness testimony, forensic evidence, and documentary material, similarly requires domestic legal authority that implementing legislation would provide.

The ICC Situation in Bangladesh/Myanmar also raises questions about Bangladesh's own potential exposure to ICC jurisdiction. The killings of protesters during the July 2024 uprising, with estimates ranging from 800 to over 1,400 deaths, could in principle constitute crimes against humanity under the Rome Statute if they were carried out as part of a widespread or systematic attack against a civilian population. The ICC's jurisdiction extends to such crimes when committed on the territory of a state party. Bangladesh ratified the Rome Statute before the

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July 2024 killings, and the killings occurred on Bangladesh's territory. The ICC therefore has potential jurisdiction over the July killings, at least in principle.

Whether the ICC Prosecutor would open an investigation into the July killings is a separate question from whether jurisdiction exists. The ICC's complementarity principle requires that the Court defer to domestic prosecution where a state is genuinely able and willing to investigate and prosecute the relevant crimes. Bangladesh's domestic accountability processes, specifically the ICT proceedings against former AL officials and security personnel, would be relevant to the complementarity analysis. If Bangladesh's domestic processes are genuine, independent, and effective, the ICC would defer to them. If they are not, ICC jurisdiction could be invoked.

This creates a powerful incentive for Bangladesh to conduct genuine, independent, and fair domestic proceedings into the July killings: not only because justice for the victims demands it, but because the ICC complementarity principle means that Bangladesh's domestic accountability directly affects whether international criminal jurisdiction is exercised over its own officials. A government that suppresses domestic accountability invites international criminal jurisdiction. A government that promotes genuine domestic accountability insulates its officials from the ICC while simultaneously fulfilling its human rights obligations.

3.3 The Gambia v. Myanmar at the ICJ: Bangladesh as Affected Third State

The International Court of Justice proceedings in The Gambia v. Myanmar, in which The Gambia brought a case against Myanmar under the Genocide Convention alleging genocide against the Rohingya, represent another dimension of international criminal law with significant implications for Bangladesh.

For the Rohingya, it offers legal leverage for civil claims via universal jurisdiction in national courts, and pressures Bangladesh, straining under refugee burdens, to negotiate dignified returns. Broader implications ripple outward. Success would revitalize the Genocide Convention, encouraging third-state suits against atrocities, as in Ukraine v. Russia. It affirms erga omnes partes, democratizing enforcement beyond power politics. American Bar Association

Bangladesh is not a party to the ICJ proceedings, but it is the most directly affected state: it hosts the largest refugee population from the crisis that the case addresses, and the evidence gathered from Rohingya refugees in Bangladesh's camps has been central to the case. Even Bangladesh, the most affected neighbour, faces calls to intervene formally, as highlighted in recent analyses urging it to leverage its direct stake for stronger advocacy. American Bar Association

The constitutional question this raises for Bangladesh concerns the relationship between its international obligations to the Rohingya refugees and the domestic legal framework for refugee protection. Bangladesh is not a party to the 1951 Refugee Convention or its 1967 Protocol, which means that the Rohingya in Bangladesh do not have the formal refugee status and protection that those instruments would provide. Their presence in Bangladesh is managed through bilateral arrangements and UNHCR involvement rather than through a domestic legal framework of refugee rights and status.

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The absence of a domestic refugee law creates a constitutional gap: the Rohingya in Bangladesh lack a clear legal status, their rights are not clearly defined in domestic law, and their protection depends on political arrangements rather than legal entitlements. This situation creates both human rights concerns, since people without legal status are vulnerable to arbitrary treatment, and constitutional concerns, since the constitutional rights provisions apply, at least formally, to "any person" in Bangladesh regardless of citizenship, suggesting that the Rohingya are entitled to the constitutional rights protections even without a specific refugee law framework.

CHAPTER FOUR: THE INTERNATIONAL CRIMES TRIBUNALS: DOMESTIC ACCOUNTABILITY, INTERNATIONAL STANDARDS, AND THE POST-2024 TRANSFORMATION

4.1 The Original Mandate: Prosecuting 1971 Atrocities

The International Crimes Tribunals of Bangladesh were established under the International Crimes (Tribunals) Act of 1973, enacted pursuant to the First Amendment to the constitution. The original mandate of the tribunals was to try persons accused of genocide, crimes against humanity, war crimes, and other crimes under international law committed during the 1971 Liberation War, specifically during the period of the Pakistani military's Operation Searchlight and the subsequent nine-month war.

The decision to establish dedicated domestic tribunals for the prosecution of 1971 atrocities rather than pursuing international jurisdiction, whether through the UN Security Council, an ad hoc international tribunal, or the ICC (which did not yet exist), reflected both the political priorities of the newly independent state and the practical realities of international criminal law at the time. The Nuremberg and Tokyo tribunals were the only major precedents for international criminal prosecution, and the UN's practice of ad hoc international criminal tribunals would not begin until the ICTY and ICTR were established in the 1990s. Bangladesh's decision to establish domestic tribunals in 1973 was, in the context of the time, a defensible choice.

The problem was that the tribunals established in 1973 never actually operated. For decades, the 1971 atrocities went unprosecuted. The perpetrators, including many who had collaborated with the Pakistani military in committing mass killings, sexual violence, and other crimes, lived freely in Bangladesh, some of them achieving positions of political prominence through parties that rejected the AL's liberation war narrative.

When the tribunals were finally activated by the AL government in 2010, their activation came with significant international criticism about the independence and fairness of the proceedings. The ICT Act, as Amnesty International, Human Rights Watch, and the UN Special Rapporteurs noted, contained significant departures from international fair trial standards. The right of the accused to adequate time and facilities for the preparation of their defence was limited. The rules of evidence were more permissive of hearsay and other potentially unreliable forms of proof than international criminal law standards require. Defence counsel faced obstacles in gathering and presenting evidence. And the composition of the tribunals, with judges appointed by the AL

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government, raised independence concerns that were exacerbated by the disclosure of what appeared to be communications between a presiding judge and a government-aligned lawyer.

There were major criticisms both politically and legally at the national and global level including by Human Rights Watch, Amnesty International and the UN Human Rights Council against the Hasina-formed tribunals for lack of neutrality and non-compliance with international legal standards. Internationallaw

4.2 The 2024 Amendments: Expanding Jurisdiction to Address the July Killings

The most significant recent development in the ICT framework is the 2024 amendment to the International Crimes (Tribunals) Act, which dramatically expanded the tribunals' jurisdiction beyond the 1971 liberation war crimes to cover atrocities committed in any period of Bangladesh's history. This amendment was specifically intended to allow the prosecution of those responsible for the killings during the July 2024 uprising, as well as other crimes committed during the AL government's time in power.

Once focused solely on prosecuting atrocities from Bangladesh's 1971 Liberation War, the International Crimes Tribunal now finds itself at the centre of a legal and political transformation. Triggered by mass protests and government repression in mid-2024, sweeping amendments to its founding law have dramatically expanded the tribunal's mandate. As it begins prosecuting recent acts of political violence, the ICT-BD raises critical questions about justice, legitimacy, and the future of the rule of law in Bangladesh. Ghrd

The constitutional and international law dimensions of this jurisdictional expansion are complex and deserve careful analysis. On the positive side, the expansion creates a domestic accountability mechanism for mass atrocity crimes committed in the contemporary period, fulfilling Bangladesh's international obligations to investigate and prosecute crimes against humanity. The UN Office of the High Commissioner for Human Rights conducted a fact-finding mission and published a report in 2025 documenting human rights violations and abuses related to the July and August 2024 protests, providing an international evidentiary foundation for the domestic proceedings.

On the negative side, the expansion of the ICT's jurisdiction creates several serious risks. The first is the risk of politicised prosecution: using the tribunal's broad mandate primarily against political opponents of the current government rather than as a genuine accountability mechanism. The AL's own record with the ICT, using it primarily against Islamist opposition leaders, illustrates this risk concretely. The BNP's use of the expanded ICT against AL officials creates a similar concern about selective accountability. Genuine transitional justice requires impartial accountability across partisan lines, and a tribunal controlled by and accountable to the government of the day cannot easily provide this.

The second risk is the fair trial dimension. There is disagreement among lawyers about whether the tribunal's jurisdiction is limited to trying the war crimes of 1971 or if its competence extends to offences that took place afterward as well. Internationallaw This jurisdictional ambiguity creates uncertainty about the applicable legal standards and potentially about the rights of the

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accused in the expanded proceedings. The trial-in-absentia provisions of the amended ICT Act have been specifically criticised: The draft Ordinance allows for trials to be conducted in absentia. While this provision may be included to avoid potential delays, it would fundamentally compromise an accused person's right to a fair trial as set out in Article 14 of the ICCPR. Human Rights Watch

The third risk is the relationship between domestic ICT proceedings and international criminal law mechanisms. The complementarity principle of the ICC requires that domestic proceedings be genuine in order to preclude international jurisdiction. If the expanded ICT proceedings are not independent, impartial, and effective, they will not satisfy the complementarity test and could invite ICC intervention in the July killings situation.

4.3 The UN Fact-Finding Mission and Its Constitutional Implications

The UN Office of the High Commissioner for Human Rights fact-finding mission into the July-August 2024 protests represents a significant international engagement with Bangladesh's accountability challenge. The mission was invited by the interim government, demonstrating an openness to international scrutiny that was notably absent during the AL years, and its report documented specific incidents of excessive force, identified responsible units and in some cases individuals, and made recommendations for both criminal accountability and institutional reform.

The constitutional implications of the UN fact-finding mission are several. First, the report provides an independent international documentation of events that the domestic political environment might otherwise distort: a basis for historical truth that cannot easily be manipulated by political actors. Second, it creates an international accountability standard against which the domestic proceedings can be measured: if the ICT or other domestic mechanisms fail to address the specific incidents and individuals documented in the UN report, this failure will be visible to the international community. Third, it establishes the evidentiary foundation for potential ICC intervention if domestic proceedings fail the complementarity test.

The Bangladesh interim government's invitation to the UN High Commissioner for Human Rights also sets a precedent for international engagement with Bangladesh's accountability processes that the new elected government will be expected to honour or explicitly repudiate. A government that withdraws from international accountability engagement after winning an election would send a powerful signal about its own intentions regarding the accountability for July killings, a signal that would be read by both domestic and international audiences.

CHAPTER FIVE: ARTICLE 25 AND THE CONSTITUTION'S FOREIGN POLICY FRAMEWORK: PRINCIPLES, PRACTICE, AND THE REFORM AGENDA

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5.1 The Constitutional Foreign Policy Principles and Their Interpretation

Article 25's commitment to respect for international law and treaty obligations is a constitutional principle with both external and internal dimensions. Externally, it commits Bangladesh to conducting its international relations in accordance with the principles of international law, peaceful dispute resolution, and respect for the UN Charter. Internally, it provides a constitutional basis for arguing that the government must comply with its international obligations and cannot take actions that violate them without constitutional justification.

The internal dimension of Article 25 has been insufficiently explored in Bangladesh's constitutional jurisprudence. The question of whether Article 25 creates a justiciable constitutional obligation on the government to comply with its international obligations has generally been answered negatively by the courts, consistent with the dualist framework that treats international law and constitutional law as separate systems. But the principle of consistent interpretation, which the courts have increasingly adopted, points toward a different answer: if the constitution must be interpreted consistently with Bangladesh's international obligations wherever possible, then Article 25's commitment to respecting those obligations has operative constitutional significance even within the dualist framework.

The post-2024 reform proposals for the foreign policy provisions of the constitution have not been as detailed as the proposals for domestic institutional reform. The July Charter focuses primarily on domestic governance structures, and the constitutional provisions governing foreign policy have received relatively little attention in the reform commissions' deliberations. This is a significant omission, since the relationship between constitutional law and international law is one of the areas where Bangladesh most urgently needs reform.

5.2 The Case for Modified Monism: Constitutional Reform of the International Law Framework

The analysis throughout this chapter leads to a clear prescriptive conclusion: Bangladesh should move toward a modified monism in the area of human rights, giving international human rights treaty provisions direct domestic legal effect after ratification, subject to constitutional supremacy. This move would not require abandoning the dualist framework entirely: it would be a specific exception to the general rule of dualism, limited to the area of international human rights law.

Several constitutional models provide precedents for this approach. South Africa's Constitution explicitly requires courts, when interpreting the Bill of Rights, to consider international law, and to consider foreign law. The South African Constitutional Court has given substance to this provision by treating international human rights law as a mandatory interpretive resource in constitutional rights cases. Colombia's constitutional system includes what is known as the "bloque de constitucionalidad," the constitutional bloc, which incorporates international human rights treaty provisions into the constitutional order, giving them quasi-constitutional status even where they have not been implemented by ordinary legislation.

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For Bangladesh, a modified monism approach in the human rights area could be implemented through a constitutional amendment that adds a specific provision to the effect that international human rights treaties ratified by Bangladesh shall be part of the law of Bangladesh and shall inform the interpretation of constitutional rights, and that where a conflict exists between international human rights law and domestic legislation, international law shall prevail unless the constitution specifically provides otherwise. This provision would give international human rights treaty obligations direct domestic legal effect, resolve the implementation gap for ratified treaties, and create a strong interpretive framework for constitutional rights that draws on the extensive jurisprudence of international human rights treaty bodies.

The complementary reform should address the reservations to CEDAW. A constitutional commitment to gender equality that is qualified by reservations to the primary international treaty on gender equality is internally inconsistent. The withdrawal of the reservations to CEDAW Articles 2 and 16(1)(c), combined with a serious legislative engagement with the tension between Islamic personal law and constitutional equality, is necessary for Bangladesh to achieve genuine consistency between its constitutional commitments and its international obligations.

CHAPTER SIX: THE ROHINGYA CRISIS: CONSTITUTIONAL DIMENSIONS OF A HUMANITARIAN EMERGENCY

6.1 The Rohingya in Bangladesh: A Crisis Without Constitutional Framework

Bangladesh hosts more than one million Rohingya refugees, the largest concentration of stateless persons in a single country in the world. The scale of the Rohingya presence and the depth of the humanitarian crisis it represents are well documented: the camps at Cox's Bazar, particularly the Kutupalong-Balukhali megacamp, are among the most densely populated human settlements on earth, with severe inadequacies in shelter, sanitation, healthcare, and education.

The constitutional dimensions of the Rohingya crisis have received relatively little systematic attention in the scholarly literature, perhaps because the immediate humanitarian concerns overshadow the legal analysis. But the constitutional framework within which Bangladesh manages the Rohingya presence has direct implications for the human rights of more than one million people and for Bangladesh's compliance with its international obligations.

As noted earlier, Bangladesh is not a party to the 1951 Refugee Convention or its 1967 Protocol. This means that the Rohingya in Bangladesh do not have formal refugee status as defined by international law. They are, in legal terms, stateless persons or irregular migrants, and their protection depends on Bangladesh's tolerance rather than on legal entitlements defined by domestic law. The absence of a domestic legal framework creates vulnerability: the Rohingya can in principle be subject to arbitrary detention, forced return to Myanmar (refoulement), or other treatment that international law would prohibit if Bangladesh were a Refugee Convention party.

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The constitutional rights provisions of the Bangladesh constitution apply, at least formally, to any "person" rather than only to citizens. The fundamental rights of Article 31 (right to protection of law), Article 32 (right to life and personal liberty), and Article 33 (safeguards as to arrest and detention) are not explicitly limited to citizens. If these provisions apply to the Rohingya, they create a constitutional minimum standard for their treatment that is independent of their refugee status under international law.

The practical gap between this constitutional minimum standard and the actual treatment of the Rohingya has been significant. Reports of violence against Rohingya residents, restrictions on their movement, poor conditions in the camps, inadequate access to education and healthcare, and periodic forced returns raise serious concerns about Bangladesh's compliance with both constitutional rights standards and international human rights law. The Bangladesh Supreme Court has not yet had occasion to rule definitively on whether constitutional rights provisions apply to the Rohingya, a question whose resolution would have enormous practical significance.

6.2 The Refugee Law Gap and the Constitutional Obligation to Protect

Bangladesh's absence from the Refugee Convention framework reflects a deliberate policy choice rather than mere historical accident. The country's political leaders have consistently argued that Bangladesh, as a developing country with its own significant poverty and resource constraints, cannot accept the unlimited obligations to refugees that the Convention framework implies. This argument has some practical force: the scale of the Rohingya crisis is genuinely extraordinary, and the economic burden on Bangladesh has been enormous.

But the policy choice to remain outside the Refugee Convention is not necessarily consistent with Bangladesh's existing international obligations. The prohibition on refoulement, the return of persons to territories where they face serious risk of persecution or torture, has been held by the UN Human Rights Committee and the Committee against Torture to apply to all states, regardless of whether they have ratified the Refugee Convention, as a matter of customary international law. Since customary international law is part of domestic law in common law systems without the need for legislative transformation, Bangladesh's refoulement obligation may already be a domestic legal obligation enforceable in its courts, even without Refugee Convention ratification.

A constitutional reform that explicitly recognises the right to seek asylum, along the lines of Article 14 of the German Basic Law or Article 18 of the EU Charter of Fundamental Rights, would give this international obligation a clear constitutional foundation. The July Charter's proposals for the expansion of constitutional rights do not specifically address the right to asylum, but the broader commitment to human dignity and equality as foundational constitutional principles provides a basis for arguing that such a right is implicit in the reformed constitutional framework.

CHAPTER SEVEN: THE INTERNATIONAL CRIMES TRIBUNALS, FAIR TRIAL RIGHTS, AND THE STANDARDS OF INTERNATIONAL CRIMINAL LAW

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7.1 The Architecture of International Criminal Fair Trial Standards

International criminal law has developed, over the decades since the Nuremberg trials, a sophisticated framework of fair trial standards that apply specifically in the context of mass atrocity prosecutions. These standards, which are grounded in the ICCPR's Article 14 guarantee of a fair trial, the Rome Statute's provisions on the rights of the accused, and the jurisprudence of the ICTY, ICTR, ICC, and other international criminal tribunals, represent the minimum requirements that any accountability process for serious international crimes must meet if it is to be regarded as legitimate by the international community.

The core elements of these standards include: the right of the accused to be informed promptly and in detail of the charges against them; adequate time and facilities for the preparation of the defence; the right to communicate with counsel of one's own choosing; the right to examine or have examined the witnesses against one and to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against one; the right to be presumed innocent until proven guilty; and the right not to be compelled to testify against oneself or to confess guilt. The right to appeal a conviction to a higher tribunal is also recognised as a core fair trial requirement.

The international criminal law framework also includes specific standards that go beyond those in general human rights treaties. The non-retroactivity principle in international criminal law prohibits the creation of new offences and their retroactive application to conduct that did not constitute a crime under international law when it was committed. The principle of individual criminal responsibility requires that each accused person's individual acts be proven beyond reasonable doubt, rather than permitting liability to be based on group membership or political affiliation alone. The gravity threshold for international criminal jurisdiction requires that only the most serious crimes of international concern be the subject of prosecution, preventing the international criminal law framework from being used for ordinary domestic political prosecution.

7.2 The ICT's Compliance Gap: Where Domestic Proceedings Fall Short

The Bangladesh ICT's compliance with international criminal fair trial standards has been the subject of persistent and detailed criticism. The specific deficiencies identified by international human rights organisations, international criminal law scholars, and UN mechanisms have been consistent across multiple rounds of proceedings and multiple administrations of the tribunal.

The independence of the tribunal has been the most fundamental concern. Judges appointed by the government that is the primary interested party in obtaining convictions cannot be regarded as independent in any meaningful sense. The ICT Act provides for judicial appointment by the President, who acts on the advice of the Prime Minister, creating the same structural independence problem that afflicts the appointment of all executive-controlled judicial officers in Bangladesh. The communications between a presiding judge of the ICT and a government-aligned lawyer, which were disclosed during the Skype scandal of 2012, provided concrete evidence of the kind of political influence on judicial decision-making that the independence concern predicts.

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The evidence standard applied by the ICT has also been criticised. The ICT Act allows for the admission of hearsay evidence that would not be admitted in international criminal tribunals, and it does not provide for the same level of confrontation and cross-examination rights that international criminal law standards require. In mass atrocity cases, where the prosecution often relies on documentary evidence and testimony about events that occurred decades ago, the reliability of evidence is critically important, and the relaxation of evidence standards creates significant risk of unjust convictions.

The trial-in-absentia provisions represent a particularly serious departure from international standards. The ICCPR's Article 14 guarantees the right of the accused to be present at their trial, and the European Court of Human Rights has held that trial-in-absentia violates Article 6 of the European Convention on Human Rights unless the accused has explicitly waived their right to be present. International criminal tribunals have generally allowed trial-in-absentia only in very limited circumstances and with strong procedural safeguards. The ICT's provision for trial-in-absentia without these safeguards creates proceedings that are vulnerable to challenge as a violation of the ICCPR's fair trial guarantee.

7.3 The Reform Proposals: Toward an ICT That Meets International Standards

The constitutional reform agenda has not fully engaged with the ICT's compliance gap, which is a significant omission given the scale of the proceedings now underway and the importance of the accountability objective they are supposed to serve. A comprehensive reform of the ICT framework is needed, one that addresses the structural independence problem, strengthens the evidence standards to align with international criminal law requirements, abolishes or strictly limits trial-in-absentia, and creates meaningful appellate review.

Several reform options are available. The most ambitious would be the internationalisation of the ICT: the inclusion of international judges, either from UN-nominated lists or through a UN-mediated appointment process, in the composition of the tribunal. This approach, used in the Sierra Leone Special Court, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon, provides a structural guarantee of independence that a purely domestic appointment process cannot. It also provides expertise in international criminal law that domestic judges may lack.

A less ambitious but still significant reform would be the restructuring of the appointment process to use the National Constitutional Council or a similar multipartisan body, providing the same independence guarantees for ICT judges as are proposed for other constitutional judicial positions. Combined with stronger evidence standards and clearer fair trial procedural rules, this structural reform would substantially improve the ICT's compliance with international standards.

CHAPTER EIGHT: CONSTITUTIONAL REFORM AND INTERNATIONAL LAW: BRIDGING THE IMPLEMENTATION GAP

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8.1 The Case for Constitutional Internationalisation

The examination of Bangladesh's relationship with international law throughout this part has revealed a systematic pattern: Bangladesh has accepted an extensive range of international legal obligations, through treaty ratification and through its emerging role as a key participant in the international criminal law system, but its constitutional framework and domestic legal order have not been designed to give those obligations effective domestic legal force. The dualist approach, the absence of implementing legislation for many treaties, the persistence of reservation to CEDAW, the failure to enact a domestic Refugee Convention, and the structural deficiencies of the ICT all contribute to a gap between formal international commitment and practical implementation.

The constitutional reform agenda of 2024 to 2025 has addressed many important domestic governance issues but has given insufficient attention to the international law dimension. A genuinely comprehensive constitutional reform must address the relationship between constitutional law and international law as a structural question, not merely as a matter of specific treaty implementation.

The concept of "constitutional internationalisation" has been developed in the comparative constitutional literature to describe the process by which constitutions increasingly incorporate international legal norms and institutions as part of the domestic constitutional order. This process takes various forms: explicit constitutional references to international human rights instruments, constitutional requirements that courts consider international law in interpreting domestic rights, constitutional provisions making ratified treaties part of domestic law, and constitutional commitments to international criminal jurisdiction. Germany, South Africa, Colombia, Argentina, and many other constitutional democracies have undergone constitutional internationalisation to varying degrees, and the comparative experience demonstrates that internationalisation strengthens both the domestic protection of rights and the country's international credibility.

For Bangladesh, a constitutional internationalisation strategy should include several specific elements. First, an amendment to the constitutional rights provisions to require courts to interpret constitutional rights in conformity with Bangladesh's international human rights obligations and to consider the jurisprudence of international human rights treaty bodies as persuasive authority. Second, a constitutional provision making ratified international human rights treaties part of domestic law after ratification, subject to the supremacy of the constitution but overriding inconsistent ordinary legislation. Third, a constitutional commitment to cooperating with international criminal justice mechanisms, including the ICC, and a provision mandating the enactment of Rome Statute implementing legislation within a defined period.

8.2 The Specific Proposal: A New Article 25A on International Law

The most effective way to implement the constitutional internationalisation strategy would be through the insertion of a new article in the constitution, which might be designated Article 25A, dealing specifically with the status of international law in the domestic legal order. This article should contain several distinct provisions.

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The first provision should establish the principle of consistent interpretation: all provisions of the constitution and all legislation shall, so far as possible, be read and given effect in a way that is compatible with Bangladesh's obligations under international human rights law. This provision, modelled on Section 3 of the UK Human Rights Act 1998 and Article 39(1) of the South African Constitution, creates a constitutional mandate for consistent interpretation without requiring courts to override domestic law that is clearly incompatible with international obligations.

The second provision should establish the direct applicability of ratified human rights treaties: any provision of an international treaty on human rights that has been ratified by Bangladesh shall be directly applicable by courts, tribunals, and public authorities, subject to the provisions of the constitution. This provision would resolve the implementation gap for ratified treaties without full legislative implementation, giving treaty provisions immediate domestic legal effect while preserving constitutional supremacy.

The third provision should establish a duty of cooperation with international criminal justice: Bangladesh shall cooperate fully with the International Criminal Court and other international criminal justice mechanisms to which it has submitted its jurisdiction. The government shall, within twelve months of the commencement of this provision, introduce legislation giving domestic legal effect to the Rome Statute and establishing the authorities and procedures necessary for effective ICC cooperation.

The fourth provision should address the withdrawal of incompatible reservations: the government shall endeavour within five years of the commencement of this provision to withdraw all reservations to ratified international human rights treaties that are incompatible with the constitutional guarantees of equality and non-discrimination, specifically including the reservations to Articles 2 and 16(1)(c) of CEDAW.

These four provisions would together constitute a substantial constitutional transformation of Bangladesh's relationship with international law, creating a framework of constitutional internationalisation that is both principled in its foundations and practical in its operation.

8.3 The Rohingya Crisis and the Constitutional Duty of Hospitality

The constitutional reform agenda should also address the Rohingya crisis directly, establishing a constitutional framework for the protection of persons seeking refuge in Bangladesh that is consistent with international human rights standards and provides a legal basis for the Rohingya's presence and protection.

A constitutional right to seek asylum, modelled on the German Basic Law's Article 14 or the EU Charter's Article 18, would establish the constitutional foundation for a domestic refugee protection framework. Combined with legislative implementation that defines the procedures for refugee status determination, the rights of recognised refugees, and the conditions under which return to countries of origin may be organised, this constitutional provision would transform Bangladesh's approach to the Rohingya from a matter of political tolerance to a matter of legal obligation.

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The financial and practical implications of this constitutional commitment are real and cannot be ignored. Bangladesh's argument that it cannot afford the full obligations of refugee protection has practical force. But the constitutional commitment to international human rights standards, which the post-2024 reform agenda otherwise advocates strongly, cannot credibly exclude the protection of the most vulnerable human beings on Bangladesh's territory. The constitutional internationalisation of Bangladesh's refugee protection obligations is both a matter of legal principle and a matter of the country's international credibility as a state committed to human rights.

CHAPTER NINE: CUSTOMARY INTERNATIONAL LAW IN BANGLADESH'S CONSTITUTIONAL FRAMEWORK: THE UNWRITTEN INTERNATIONAL LAW DIMENSION

9.1 Customary International Law and Its Domestic Status

Customary international law occupies a different position in Bangladesh's constitutional framework than treaty law, and this difference has significant practical implications. Unlike treaty obligations, which in Bangladesh's dualist system require legislative transformation to have domestic legal effect, customary international law is generally regarded in common law systems as automatically part of domestic law without the need for specific legislative enactment. This principle, traceable to Blackstone's formulation that the law of nations is part of the law of England, is a common law presumption that Bangladesh inherited through its colonial legal heritage and that its courts have not formally repudiated.

The practical significance of this difference is considerable. Many of the most important norms of international human rights law have achieved the status of customary law, binding on all states regardless of treaty ratification. The prohibitions on torture, extrajudicial killing, slavery, and racial discrimination are widely regarded as jus cogens norms, peremptory norms of international law from which no derogation is permitted. The principle of non-refoulement, prohibiting the return of persons to countries where they face serious risk of persecution, has been identified as a norm of customary international law by most international human rights bodies.

If these norms of customary international law are, as the common law tradition suggests, automatically part of Bangladesh's domestic law, then they are enforceable in Bangladesh's courts without the need for legislative transformation. A person subjected to torture by Bangladeshi security forces could invoke the customary law prohibition on torture as a basis for constitutional relief, even in the absence of specific implementing legislation for the CAT. A Rohingya person facing forced return to Myanmar could invoke the customary law principle of non-refoulement as a ground for judicial challenge.

The Bangladesh Supreme Court has not yet comprehensively addressed the domestic status of customary international law, but its increasing engagement with international human rights norms as interpretive guides suggests a judicial receptiveness to the argument that at least the most fundamental customary norms have domestic legal effect. The development of this

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jurisprudence would represent a significant step toward constitutional internationalisation even without formal constitutional amendment.

9.2 Jus Cogens and the Absolute Constitutional Prohibition on State Violence

The concept of jus cogens norms, peremptory norms of international law that cannot be derogated from by any agreement and that generate obligations owed to the international community as a whole (erga omnes), has been developed primarily in the international legal sphere, but its domestic constitutional implications have received increasing attention in comparative constitutional scholarship.

For Bangladesh, the jus cogens prohibition on torture and on crimes against humanity is directly relevant to the July 2024 uprising. If the killings of protesters constitute crimes against humanity under international law, and if the prohibition on crimes against humanity is a jus cogens norm binding on Bangladesh regardless of any treaty, then the constitutional rights to life and personal liberty, interpreted in light of this customary international law norm, create an absolute constitutional prohibition on the state conduct that produced those killings. No constitutional provision, no emergency declaration, and no national security justification can override a jus cogens norm.

This constitutional argument, while not yet fully developed in Bangladesh's jurisprudence, provides a powerful additional basis for accountability for the July killings. The July 2024 killings were not merely unconstitutional under Article 32's protection of the right to life: they were violations of peremptory norms of international law that generate universal obligations of accountability. The constitutional reform agenda should explicitly recognise this dimension by including, in the proposed expanded fundamental rights framework, a provision affirming that constitutional rights shall be interpreted in conformity with peremptory norms of international law and that no derogation from such norms is permissible in any circumstances.

CHAPTER TEN: TOWARD A CONSTITUTIONALLY INTEGRATED INTERNATIONAL LAW FRAMEWORK: SYNTHESIS AND PRESCRIPTION

10.1 The Integrated Framework: Principles for Reform

Drawing together the analysis of the preceding chapters, the constitutional reform of Bangladesh's relationship with international law should be guided by five integrated principles.

The first principle is completeness: the reformed constitutional framework should comprehensively address all significant dimensions of Bangladesh's international law engagement, from the domestic status of ratified treaties to cooperation with international criminal courts to the constitutional protection of persons seeking refuge.

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The second principle is enforceability: international legal obligations should be given domestic constitutional status that makes them directly enforceable by courts, without depending on the enactment of implementing legislation that future governments may delay or withhold. The consistent interpretation principle and the direct applicability of ratified human rights treaties, as proposed in the draft Article 25A, would achieve this enforceability.

The third principle is accountability: the constitutional framework should create clear legal accountability for violations of international obligations, both through judicial review of government actions that violate ratified treaties and through international cooperation mechanisms that create external accountability when domestic mechanisms fail.

The fourth principle is consistency: the constitutional framework should eliminate the inconsistencies between Bangladesh's constitutional rights guarantees and its international obligations, specifically by withdrawing the CEDAW reservations that create inconsistency between the constitutional equality guarantee and the international equality obligation.

The fifth principle is good faith: the constitutional framework should reflect a genuine commitment to international law compliance rather than the instrumentalisation of international treaty ratification for legitimating purposes while avoiding substantive implementation. This good faith commitment requires not only constitutional reform but also institutional development: the training of judges and lawyers in international law, the strengthening of the government's international law advisory capacity, and the development of civil society expertise in international human rights mechanisms.

10.2 The International Law Dimension of Bangladesh's Constitutional Moment

The constitutional moment created by the July 2024 uprising and the February 2026 referendum is an opportunity not only to reform Bangladesh's domestic constitutional governance but also to transform its relationship with the international legal order. A Bangladesh that is genuinely committed to international law, that gives international human rights obligations direct domestic legal effect, that cooperates fully with international criminal justice, and that provides legal protection for the most vulnerable people on its territory, would be a fundamentally different state from the Bangladesh that used the DSA to criminalise online expression in violation of the ICCPR, that tolerated systematic torture and enforced disappearances by its security forces, and that hosted the world's largest concentration of stateless persons without a domestic legal framework for their protection.

The transformation of Bangladesh's constitutional relationship with international law is not merely a technical legal project. It is a fundamental moral and political choice about the kind of state Bangladesh aspires to be: a state that treats its international legal commitments as genuine obligations rather than as diplomatic gestures, that regards the protection of human rights as a constitutional imperative rather than a political inconvenience, and that understands its participation in the international legal order as a reflection of its own deepest constitutional values rather than as an external constraint on its freedom of action.

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The July 2024 uprising expressed, among its many political demands, a fundamental desire for Bangladesh to be governed in accordance with the rule of law rather than the arbitrary will of its rulers. The rule of law in the twenty-first century is not purely a domestic concept: it encompasses the full body of international legal obligations that Bangladesh has accepted, the norms of international human rights law that bind all states regardless of treaty ratification, and the evolving standards of international criminal law that Bangladesh has committed to uphold through its participation in the ICC. A constitutional reform agenda that addresses only the domestic dimension of the rule of law while ignoring the international dimension is incomplete. The full realisation of Bangladesh's constitutional potential requires the integration of domestic and international legal orders into a coherent framework of rights, accountability, and governance that serves all persons within Bangladesh's jurisdiction, regardless of their citizenship, their political beliefs, or the circumstances that brought them to Bangladesh's shores.

SELECTED BIBLIOGRAPHY AND FURTHER READING FOR PART ELEVEN

The study of Bangladesh's constitutional relationship with international law requires engagement with both international law scholarship and constitutional law analysis. The following works provide essential background and advanced analysis.

On the monism-dualism debate, Hersch Lauterpacht's foundational essays in "International Law and Human Rights" remain essential reading. Janne Nijman and Andre Nollkaemper's edited volume "New Perspectives on the Divide Between National and International Law" (Oxford University Press, 2007) provides the most sophisticated contemporary analysis of the relationship between domestic and international legal orders. Kawser Ahmed's SSRN paper "The Constitution of Bangladesh and International Law" (June 2025) is the most comprehensive and authoritative analysis of Bangladesh's specific constitutional position and is essential reading for any serious student of this subject.

On international human rights treaty obligations, the Concluding Observations of the UN Human Rights Committee on Bangladesh's periodic reports under the ICCPR provide essential primary source material documenting the gap between Bangladesh's commitments and its implementation record. Similarly, the Concluding Observations of the CEDAW Committee provide systematic analysis of Bangladesh's gender equality obligations and the areas of non-compliance. Amnesty International's country reports on Bangladesh, including its 2024 Human Rights Charter submission (ASA 13/7559/2024), provide detailed contemporary documentation of human rights violations and international obligation failures.

On the ICC and Bangladesh/Myanmar, the ICC's official case page at icc-cpi.int/bangladesh-myanmar provides access to all official documents in the situation. The American Bar Association International Law journal's 2025 special issue, cited throughout this part, contains several excellent analyses of the jurisdictional dimensions and the Rohingya justice question. Shahram Dana's analysis of the ICC's jurisdictional innovation in the Bangladesh/Myanmar situation is particularly valuable for understanding the legal precedent it sets.

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On international criminal law and the ICT, David Cohen's comparative analysis of international criminal tribunals, "Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta" provides valuable context for evaluating domestic international crimes tribunals in post-conflict societies. Suzannah Linton's work on the ICT and international standards is directly relevant. The Global Human Rights Defence analysis "Beyond 1971: The Transformation of Bangladesh's International Crimes Tribunal" (November 2025) provides the most current analysis of the expanded ICT jurisdiction and its implications.

On the Rohingya and international law, Fortify Rights' extensive documentation of the Rohingya crisis provides essential factual background. Guy Goodwin-Gill and Jane McAdam's "The Refugee in International Law" (Oxford University Press, 3rd edition) provides the theoretical framework for understanding Bangladesh's obligations to the Rohingya population. The Gambia v Myanmar proceedings before the ICJ, all documents for which are available at icj-cij.org, provide primary source material on the genocide allegations and Bangladesh's position as affected third state.

End of Part Eleven

PART TWELVE

THE CONSTITUTION IN THE CRUCIBLE: CONSOLIDATION, IMPLEMENTATION, AND THE UNFINISHED REPUBLIC

PREFACE TO PART TWELVE

Every constitutional journey has a destination that recedes as it is approached. The act of writing a constitution, however brilliant the drafters and however genuine the popular mandate, is not the completion of a constitutional project but its beginning. What follows the moment of constitutional creation or radical constitutional reformation is a process that political scientists call democratic consolidation and constitutional theorists describe as the institutionalisation of constitutional norms, a process that is longer, harder, and more uncertain than the foundational act itself. Bangladesh has now reached one of those rare and treacherous junctures in constitutional history at which the work of foundation must give way to the equally demanding work of consolidation, and the very uncertainty of that transition is itself a constitutional phenomenon of the first order.

The eleven preceding parts of this textbook have traced the arc of Bangladesh's constitutional history from the philosophical bedrock of constitutionalism itself through the particular circumstances of the 1972 founding, the successive waves of constitutional crisis and authoritarian retrenchment, the internal and external dimensions of constitutional rights, the judicial architecture and its pathologies, the transformation of fundamental rights in theory and practice, the electoral system and its structural distortions, the federalism question and the governance of difference, the political economy of constitutional failure, and finally the

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international law dimension of Bangladesh's constitutional obligations. This twelfth and final part undertakes the most difficult task of all: to assess Bangladesh's constitutional situation as it stands in the immediate aftermath of the February 2026 elections and referendum, to examine the theoretical frameworks that can help us understand what has happened and what may happen next, and to offer a considered analysis of the conditions under which Bangladesh's long constitutional struggle might at last produce a republic worthy of the aspirations of the people who founded it and of the students and citizens who risked and sacrificed their lives in the uprising of July and August 2024.

This is not an optimistic task, but it is not a despairing one either. Bangladesh's constitutional history is, as these pages have repeatedly shown, a history of genuine tragedy punctuated by moments of remarkable democratic vitality and popular courage. The July uprising was such a moment of vitality and courage. The question before the republic now is whether the political institutions and the political culture that the uprising created space for are capable of sustaining and deepening the constitutional promise that the uprising expressed, or whether, as has happened so many times before, the structural dynamics of Bangladeshi politics will reassert themselves and produce yet another cycle of concentrated power, institutional decay, and eventual popular revolt.

The analysis that follows is organised around three large themes. The first is the theory of constitutional consolidation, examined through the lens of both comparative constitutional scholarship and Bangladesh's specific historical experience. The second is the detailed examination of the July Charter, the February 2026 referendum, and the immediate constitutional crisis that erupted in the days following the election, as the newly elected BNP-dominated parliament refused to constitute the Constitution Reform Council that the referendum result mandated. The third is a forward-looking assessment of the conditions, institutional requirements, and political choices that would need to come together for Bangladesh to achieve genuine constitutional consolidation rather than another iteration of the cycle of hope and disappointment that has defined its constitutional history.

CHAPTER ONE: THE THEORY OF CONSTITUTIONAL CONSOLIDATION AND ITS APPLICATION TO POST-REVOLUTIONARY TRANSITIONS

1.1 What Constitutional Consolidation Means and Why It Is So Difficult

The concept of democratic consolidation was first systematically developed in the political science literature of the 1980s and 1990s, primarily in the context of the third wave of democratisation that swept through Southern Europe, Latin America, and eventually Eastern Europe and parts of Asia and Africa. Juan Linz and Alfred Stepan, in their foundational 1996 work Problems of Democratic Transition and Consolidation, defined a consolidated democracy as one in which democracy has become the only game in town, meaning that no significant group of political actors devotes serious resources to creating a non-democratic alternative regime and that democratic procedures have become deeply internalised, or routinised, in political life. Philippe Schmitter and Terry Lynn Karl, writing at approximately the same period,

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defined consolidation as the process by which democracy becomes so broadly and profoundly legitimated among its citizens that it is very unlikely to break down. Larry Diamond's important contribution to this literature emphasised the distinction between electoral democracy, a system that holds competitive multiparty elections, and liberal democracy, a system that also protects civil liberties, maintains the rule of law, and limits the power of elected governments through horizontal accountability mechanisms.

What is important to observe from the outset is that constitutional consolidation, properly understood, is a substantially more demanding concept than democratic consolidation in the electoral sense alone. A country can hold regular competitive elections, and those elections can be broadly free and fair, and yet the country's constitutional order may remain profoundly unconsolidated in the sense that constitutional norms are not genuinely internalised by political actors, that constitutional institutions lack the capacity and independence to enforce those norms, and that the culture of constitutional compliance that gives constitutional provisions their practical effectiveness has not developed. Bangladesh has experienced precisely this kind of partial democratisation combined with constitutional fragility for much of its post-1991 history. The restoration of parliamentary democracy in 1991 after the fall of General Ershad did not produce constitutional consolidation; it produced a competitive electoral system operating within a constitutional framework that remained highly vulnerable to manipulation, capture, and eventual subversion.

The scholarship on constitutional consolidation has developed considerably since Linz and Stepan's foundational work. Tom Ginsburg and Aziz Huq's 2018 analysis of constitutional retrogression, which was introduced in Part One of this textbook and which has remained one of the most influential frameworks for understanding democratic erosion in the twenty-first century, extended the earlier consolidation literature by identifying the specific mechanisms through which consolidated democracies can experience incremental institutional decay without the dramatic ruptures of the classic authoritarian reversion. Ginsburg and Huq identified three institutional predicates of democracy whose simultaneous erosion characterises retrogression: competitive elections, rights of political speech and association, and the administrative and adjudicative rule of law. Their key insight was that retrogression is distinguished from ordinary democratic imperfection precisely by the simultaneous erosion across all three dimensions, and that this simultaneity is what makes retrogression so difficult to resist, because each individual erosion can be presented as a minor legal or administrative adjustment while the aggregate effect constitutes a regime transformation.

The 2024 Annual Review of Political Science published by Edoardo Grillo, Zhaotian Luo, Monika Nalepa, and Carlo Prato represents a more recent synthesis of the theoretical modelling of democratic backsliding. Their framework, which organises the backsliding literature according to the source of constraints on the executive (vertical or horizontal restrainers) and the target of backsliding (electoral manipulation or executive aggrandizement), provides a useful analytical scaffold for understanding both the Hasina-era retrogression that the July uprising reversed and the risks that the post-uprising constitutional order faces. Vertical restrainers are the democratic checks that come from below, primarily from electoral accountability to voters. Horizontal restrainers are the institutional checks that come from co-equal branches of government, including courts, legislatures, and independent commissions. The Hasina

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government systematically dismantled both sets of restrainers: electoral manipulation through the infamous elections of 2014 and 2018 undermined vertical accountability, while the repeated subordination of the judiciary, the emasculation of the Election Commission, and the capture of parliamentary processes through Article 70's anti-defection provisions eliminated horizontal accountability. The result was a textbook case of what Grillo and colleagues call the executive aggrandizement pathway to democratic backsliding.

For Bangladesh's current constitutional moment, the theoretical literature on consolidation suggests several important analytical questions. First, how does a polity transition from a revolutionary constitutional moment, in which the normal rules of constitutional procedure are suspended in favour of extraordinary popular legitimacy, to a consolidated constitutional order in which those normal rules provide the framework for political competition? Second, what are the specific institutional requirements for constitutional consolidation in a post-retrogression context, where the institutions that normally support constitutional norms have been systematically weakened and their credibility undermined? Third, what is the relationship between electoral outcomes and constitutional consolidation, specifically whether a dominant electoral majority of the kind the BNP achieved in February 2026 is more likely to support or to obstruct the constitutional reforms that the referendum endorsed? These questions structure the analysis of this chapter.

1.2 Constitutional Moments and the Problem of Transition

Bruce Ackerman's theory of constitutional moments, which was introduced in Part One of this textbook in the context of analysing the legitimacy of constitutional change, becomes particularly illuminating when applied to Bangladesh's current situation. Ackerman's core insight is that genuine constitutional transformation requires not only a formal legal process but what he calls higher lawmaking: a moment of exceptional popular mobilisation in which citizens themselves participate directly in shaping the fundamental terms of their political life, rather than leaving those decisions to the ordinary processes of representative government. The American constitutional experience, Ackerman argued, has witnessed several such moments: the original founding, the Reconstruction amendments that followed the Civil War, and the New Deal constitutional settlement of the 1930s that fundamentally transformed the relationship between the federal government and the economy.

The Bangladesh July uprising of 2024 has many of the characteristics that Ackerman attributes to a constitutional moment. It involved massive, sustained popular mobilisation that transcended ordinary partisan politics. It was triggered by a specific grievance, the quota reform movement, but rapidly expanded into a comprehensive challenge to the existing constitutional order and its authoritarian deformations. It produced a decisive political rupture, the collapse of the Hasina government, that created genuine political space for constitutional transformation. And it generated a clear popular mandate for change, expressed first in the uprising itself and then in the referendum result of February 2026, in which 61 percent of voters endorsed the July Charter's reform agenda.

However, the Ackermanian framework also highlights the specific danger that Bangladesh now faces. Ackerman emphasises that constitutional moments are not self-executing: the popular

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energy and political mandate they generate must be translated into durable institutional change through a process that is itself constitutionally legitimate. The failure to make this translation is what Ackerman calls the problem of constitutional moments, and it is a failure that has occurred repeatedly in history, including in post-revolutionary situations that seemed far more propitious than Bangladesh's current circumstances. The French Revolution generated multiple constitutional moments without producing constitutional consolidation; instead, it produced constitutional instability and eventual authoritarian settlement. The Indian constitutional moment of independence produced a remarkably durable constitutional framework, but only because the founding generation, led by Nehru and Ambedkar, deliberately invested in constitutional institution-building rather than exploiting their extraordinary popular legitimacy for partisan advantage.

The immediately relevant precedent for Bangladesh is not, however, the grand constitutional moments of the eighteenth and nineteenth centuries. It is the experience of constitutional transitions in the late twentieth and early twenty-first centuries, particularly in Southern and Eastern Europe, in Latin America, and in Asia. The South African constitutional transition of 1993 to 1996 is widely regarded as the gold standard of modern constitutional consolidation: a negotiated process that included all significant political actors, produced a constitutional text of exceptional quality and breadth, established an independent Constitutional Court with a strong mandate for rights protection, and created a political culture in which constitutional compliance became a genuine expectation rather than a political choice. South Africa's subsequent difficulties with constitutional erosion under the Zuma administration are a reminder that even gold-standard consolidation is fragile and reversible, but the South African constitutional framework has so far proven resilient enough to resist complete retrogression.

The Colombian constitutional experience, less celebrated than South Africa's but equally instructive, offers a different model of constitutional transition. Colombia's 1991 constitution, which replaced a deeply troubled constitutional order associated with la Violencia and the drug wars, was produced through a popularly elected constitutional assembly and established an ambitious framework of rights, including economic and social rights, that went considerably beyond what existing Latin American constitutions had attempted. The Colombian Constitutional Court, established under the 1991 constitution, became one of the most innovative and activist constitutional courts in the world, developing sophisticated doctrines of rights enforcement that have been widely studied in comparative constitutional scholarship. Colombia's experience illustrates both the transformative potential of ambitious constitutional design and its limitations: despite the 1991 constitution's genuine achievements, Colombia has continued to struggle with political violence, state capture by criminal interests, and the persistent difficulty of building genuine rule of law in a deeply divided society.

For Bangladesh, the relevant lesson from these comparative experiences is that constitutional consolidation requires not merely the adoption of an impressive constitutional text but the simultaneous development of three mutually reinforcing conditions: institutional capacity, political culture, and constitutional commitment from governing elites. When any one of these three conditions is absent or weak, constitutional consolidation is unlikely to succeed, however admirable the formal constitutional arrangements may be. The February 2026 situation, in which the newly elected governing party immediately began hedging its commitment to the

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constitutional reforms endorsed by the referendum it had publicly supported, suggests that the third condition, political commitment from governing elites, may be the weakest link in Bangladesh's consolidation chain.

1.3 The Paradox of the Democratic Majority and Constitutional Constraints

One of the most persistent theoretical tensions in constitutional democracy is the tension between majority rule and constitutional constraint. Democracy, in the thin procedural sense, is a system in which political decisions are made by or in accordance with the preferences of the majority. Constitutional democracy, however, imposes significant constraints on majorities: it protects rights that majorities cannot override, it distributes power among institutions in ways that prevent majority dominance from becoming total, and it makes certain fundamental rules difficult or impossible to change even if a majority wishes to change them. The paradox, as democratic theorists have long recognised, is that constitutional constraints on majorities are themselves justified in the name of democracy, as the conditions that make genuine democracy, rather than mere majoritarianism, possible.

This paradox has a specific and acute manifestation in the context of constitutional transition. When a new constitutional order is being established or radically reformed, there is an almost irresistible temptation for the political forces that dominate the transition to use the opportunity to write constitutional rules that cement their advantage. This temptation operates even when those forces have entirely good faith democratic commitments, because the natural inclination of any political actor is to favour rules that benefit the constituency one represents. Ran Hirschl has developed this dynamic into a full-fledged theory of hegemonic preservation, arguing that the strategic interests of elite groups are frequently a primary driver of constitutional design, specifically that elites who face electoral challenges often support the constitutionalisation of rights and the empowerment of courts as a strategy for insulating their preferred policy outcomes from democratic reversal.

The BNP's behaviour in the immediate aftermath of the February 2026 elections illustrates this dynamic with uncomfortable clarity. The party campaigned on a platform that endorsed the July Charter reforms, and its leader Tarique Rahman publicly endorsed a yes vote just two weeks before the referendum. Yet as soon as the BNP had secured its decisive electoral victory, with a two-thirds supermajority in the new parliament, its legislators refused to take the second oath that would have constituted the Constitution Reform Council. The stated rationale was that the council had not been approved by parliament, a procedural objection that, while not entirely without legal merit, was widely understood as a negotiating position rather than a principled constitutional stand. The practical effect was to immediately cast doubt on whether the referendum mandate would be implemented, and to signal that the BNP, now in secure governmental control, had different interests in constitutional reform than it had expressed while in opposition.

This pattern, in which opposition parties enthusiastically endorse constitutional constraints on executive power and then become reluctant to enforce those constraints once they achieve executive power themselves, is one of the most depressingly consistent features of constitutional politics in developing democracies. It reflects a structural logic that scholars have called the

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paradox of the institutional reformer: the same political forces that have the strongest incentive to demand constitutional constraints when they are excluded from power are, once they achieve power, the forces least willing to be constrained by those very mechanisms they demanded. The appropriate response to this paradox is not cynicism, because the reforms that are demanded in opposition and implemented grudgingly in government can still produce genuine constitutional improvement, even if their implementation is incomplete and contested. But it does require a clear-eyed understanding of the political dynamics at work, because naive optimism about the good faith of governing elites is itself a form of constitutional vulnerability.

1.4 Abusive Constitutionalism and Its Distinctive Dangers in Post-Revolutionary Contexts

The concept of abusive constitutionalism, developed primarily by Rosalind Dixon and David Landau and applied in their 2021 book Abusive Constitutional Borrowing, describes the practice of using constitutional forms and processes to achieve outcomes that are fundamentally anticonstitutional in substance. Abusive constitutionalism is particularly dangerous precisely because it cloaks antidemocratic moves in constitutional legitimacy, making them harder to resist than outright constitutional violations. The Hasina government's systematic use of the Fifteenth Amendment, the Digital Security Act, and the constitutional machinery of parliamentary government to entrench one-party dominance while maintaining the formal apparatus of constitutional governance was a paradigm case of abusive constitutionalism.

But abusive constitutionalism is not limited to authoritarian governments. It can also occur in post-revolutionary contexts, where the extraordinary legitimacy of the founding moment is invoked to justify constitutional measures that entrench the revolutionary forces themselves rather than establishing genuinely inclusive constitutional governance. The risk in Bangladesh's current situation is not that the BNP will attempt the same crude mechanisms of constitutional abusiveness that the Hasina government employed, but that subtler forms of institutional engineering might be used to advantage the BNP's electoral position while formally complying with the July Charter's framework. The pattern of post-election backsliding on the Constitution Reform Council pledge is an early warning sign of this possibility.

Jan Petrov's 2024 analysis in the European Constitutional Law Review, How to Detect Abusive Constitutional Practices, offers a methodology for identifying constitutional abuse that is directly relevant to Bangladesh's situation. Petrov identifies three markers of abusive constitutional practice: first, the use of formally valid constitutional procedures to achieve outcomes that contradict the purposes those procedures were designed to serve; second, the instrumentalisation of constitutional rights discourse to shield power-concentrating measures from challenge; and third, the systematic use of constitutional amendment procedures to remove or weaken the constraints that limit executive power. Applying Petrov's framework to Bangladesh's post-election situation, the immediate question is whether the BNP's reluctance to constitute the Constitution Reform Council represents a legitimate constitutional objection to a procedurally flawed implementation order, or whether it is itself an abusive constitutional practice, specifically the use of procedural objections to obstruct reforms that would limit executive power.

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The theoretical framework of abusive constitutionalism also highlights the systemic risk that Dixon and Landau identify as the most dangerous in post-revolutionary contexts: the risk that the new governing majority will borrow the constitutional playbook of the authoritarian predecessor, adapted for its own purposes. In Bangladesh's case, this would mean not the overt authoritarianism of the 2014 to 2024 Hasina period but a more subtle programme of institutional capture, through judicial appointments that produce a compliant Supreme Court, through electoral reforms that advantage the governing party, and through the selective implementation of the July Charter's provisions, implementing those that strengthen the governing party's position while delaying or diluting those that impose genuine constraints on executive power.

CHAPTER TWO: THE JULY CHARTER AS A CONSTITUTIONAL DOCUMENT: ANALYSIS, STRENGTHS, AND STRUCTURAL WEAKNESSES

2.1 The Constitutional Reform Commission Report: A Critical Examination

Before analysing the July Charter itself, it is necessary to examine the constitutional reform proposals that preceded it, specifically the report of the Constitution Reform Commission (CRC) submitted in January 2025 under the chairmanship of Professor Ali Riaz. The CRC report represented the most comprehensive systematic examination of Bangladesh's constitutional structure since the 1972 founding, and its proposals, which were the primary source material from which the July Charter's constitutional provisions were drawn, reveal both the seriousness of the reform effort and the compromises that political negotiation required.

The CRC's foundational diagnosis was that the 1972 constitution, however admirable in its original design, had been so thoroughly deformed by decades of amendment, martial law validation, and institutional subversion that incremental repair was insufficient. What was needed, in the commission's view, was a structural reconstitution: not merely amendments to specific provisions but a fundamental reconceptualisation of the constitutional order's basic architecture. This is a conclusion with which the analysis developed throughout this textbook concurs, and it represents an important intellectual contribution to Bangladesh's constitutional discourse.

The commission's most significant substantive proposals fell into several broad categories. On the question of the fundamental principles of state policy, the commission proposed replacing the original 1972 formulation of nationalism, socialism, democracy, and secularism, which had been successively amended and reinterpreted over five decades, with a new quartet of foundational values: equality, human dignity, social justice, and pluralism. Democracy was retained from the original formulation, but the other three principles were replaced, and the commission was explicit that this replacement was not merely terminological but substantive, reflecting a fundamental rethinking of the ideological basis of the constitutional order.

This proposal provoked considerable controversy. Critics from the Awami League tradition, which had been excluded from the NCC process, argued that abandoning the original four principles, particularly secularism, represented a capitulation to religious nationalist forces and a

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betrayal of the liberation war's foundational commitment to a pluralist, non-communal state. Defenders of the commission's approach, including the commission itself, argued that the concept of pluralism, properly understood, encompasses and indeed strengthens the substantive commitment to a state that respects all faiths and protects religious minorities from discrimination, while avoiding the political toxicity that the word secularism had accumulated through decades of partisan contestation.

This debate is not merely terminological. It raises deep questions about constitutional identity and the relationship between a constitution's foundational value commitments and its specific rights guarantees. Jacobsohn's concept of constitutional identity, developed in his 2010 book Constitutional Identity, is useful here. Jacobsohn argues that a constitution's identity is constituted not by any single provision or even by any particular combination of provisions, but by the dynamic interaction between the constitutional text and the broader political culture within which it operates. A constitutional identity is the result of an ongoing interpretive practice that is simultaneously shaped by the text and shapes the text's meaning. On this view, the question of whether Bangladesh's constitutional identity is fundamentally secular or fundamentally pluralist is not one that can be resolved by textual substitution alone: it will be determined by the way in which the new constitutional principles are interpreted and applied over time, by the courts, by the political branches, and by civil society.

The commission's proposals on institutional architecture were in some respects more structurally consequential than its proposals on foundational values. The recommendation to establish a bicameral legislature, with a lower house of 400 seats and an upper house or Senate of 105 seats, represented a fundamental transformation of Bangladesh's constitutional structure. The commission's rationale for bicameralism was sophisticated: the upper house, with its proportional representation basis, would provide a counterweight to the winner-takes-all majoritarianism of the lower house's first-past-the-post electoral system; it would give political parties that win significant shares of the popular vote but few constituency seats a meaningful presence in the legislative process; and it would create an additional check on hasty or poorly considered legislation by requiring approval from a chamber with a different democratic basis.

The comparativist literature on bicameralism provides a mixed verdict on these arguments. George Tsebelis and Jeannette Money, in their foundational comparative study Bicameralism, demonstrate that bicameral systems can either increase or decrease legislative output and policy stability depending on the specific design of the relationship between the two chambers. The key variables are the degree of incongruence between the two chambers, meaning the degree to which they differ in their composition, and the degree of symmetry between them, meaning whether both chambers have genuine legislative power or whether one chamber is clearly dominant. The commission's proposal for a proportional representation upper house alongside a first-past-the-post lower house creates a high degree of incongruence, which comparative evidence suggests is associated with stronger horizontal accountability but also with greater potential for legislative deadlock.

The most politically sensitive of the commission's institutional proposals was the recommendation for a two-term limit on the Prime Minister's tenure, with each term defined as five years. This proposal directly addressed what was perhaps the most structurally destabilising

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feature of Bangladesh's constitutional history: the tendency for long-serving Prime Ministers to use the constitutional machinery of parliamentary government to entrench their personal authority and eventually to eliminate meaningful political competition. The Hasina government's trajectory from 2009 to 2024 was the most recent and extreme manifestation of this tendency, but it was not the first. The proposal for a maximum of ten years in the office of Prime Minister over a lifetime, rather than per continuous term, was intended to prevent the kind of incremental constitutional subversion that long tenure makes possible.

The commission also proposed significant expansion of the fundamental rights chapter, transforming several directive principles into justiciable rights. The right to food, the right to shelter, the right to education, the right to healthcare, and, most innovatively, the right to internet access were proposed as enforceable constitutional rights rather than mere programmatic aspirations. The inclusion of internet access as a fundamental right reflects the lessons of the Hasina government's systematic use of internet shutdowns as a tool of political control, particularly during the July uprising when mobile internet was shut down for approximately ten days in an effort to prevent the coordination of protests. Making internet access a fundamental right would create a constitutional basis for challenging future internet shutdowns, though, as with all social rights, the question of justiciability and the appropriate standard of review would be critical to the right's practical effectiveness.

2.2 The National Consensus Commission Process: Inclusion, Exclusion, and the Legitimacy Question

The National Consensus Commission established by the interim government in February 2025 to negotiate the July Charter among political parties was not, contrary to its name, a genuinely inclusive process of national consensus-building. Several structural features of the NCC process deserve critical examination, because the weaknesses of the process have direct implications for the legitimacy and durability of the constitutional framework it produced.

The most fundamental legitimacy problem was the exclusion of the Awami League from the NCC deliberations. The Awami League was banned under the Anti-Terrorism Act in October 2024, following proceedings that many legal scholars regarded as constitutionally questionable and procedurally irregular. Whatever the merits of the case for banning the Awami League as an organisation, the effect of its exclusion from the NCC process was to deny representation to a political force that, however discredited, had received the support of a substantial portion of the Bangladeshi electorate for decades. Constitutional frameworks that are negotiated in the absence of major political forces lack the comprehensive buy-in that gives constitutional commitments their durability. The experience of Chile's 2021 to 2022 constitutional process, in which an initial constitutional convention that excluded traditional right-wing parties produced a draft that was overwhelmingly rejected in a referendum, offers a cautionary precedent: when major political constituencies feel that a constitutional process has been conducted without them, they have both the motive and the capacity to organise opposition to its products.

The exclusion of the four second-wave reform commissions from the NCC's deliberations represented a different but equally serious inclusivity problem. The commissions on women, labour, media, and local government had produced substantive reform proposals that addressed

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some of the most important structural inequalities in Bangladeshi society and governance, yet the NCC did not incorporate these proposals into the July Charter, and the interim government provided no clear roadmap for their implementation. The practical effect was that the women's commission's recommendations on gender equality in political representation, economic rights, and protection from violence were not given the same constitutional standing as the first-wave commissions' proposals. This exclusion had both substantive and symbolic consequences: substantively, it meant that the constitutional reform framework was weaker on gender equality than it might have been; symbolically, it reinforced the message that women's issues are secondary concerns in Bangladesh's constitutional politics, a message that is both factually wrong and politically damaging.

The composition of the NCC itself raised concerns about representational diversity. All eight NCC representatives were men, despite the fact that Bangladesh has a strong tradition of women's political leadership, that the women's commission had produced substantive proposals specifically within the NCC's mandate, and that the July uprising itself had seen remarkable participation by women students and activists. The all-male composition of the NCC was not accidental; it reflected the persistent structural marginalisation of women within Bangladesh's formal political institutions, a structural problem that the commission itself had identified as requiring constitutional remediation. The irony of an all-male commission designing the framework for women's political empowerment was noted by many observers and is a revealing symptom of the gap between constitutional aspiration and political practice that this textbook has examined throughout its pages.

Habermas's theory of communicative action and deliberative democracy provides a useful analytical lens for evaluating the NCC process. On the Habermasian account, democratic legitimacy depends on the quality of the deliberative process through which political decisions are made: a decision is legitimate to the extent that it emerges from a process in which all affected parties have a genuine opportunity to participate, in which reasons are offered and assessed on their merits rather than in accordance with power relations, and in which the process is structured to produce reasoned agreement rather than mere compromise under pressure. The NCC process fails this standard in several significant respects. The exclusion of the Awami League meant that a major affected party was prevented from participating. The marginalisation of the second-wave commissions meant that substantial deliberation had taken place but its results were not incorporated. The all-male composition of the NCC meant that half of the population's perspective was systematically underrepresented. And the political dynamics of the negotiations, in which parties signed the charter with noted reservations on certain points and no mechanism was provided for resolving those reservations, suggests that the final product was indeed compromise under pressure rather than reasoned agreement.

None of this means that the July Charter lacks democratic legitimacy entirely. The referendum result, in which 61 percent of voters endorsed the charter despite these process weaknesses, provides a form of popular ratification that the charter's procedural limitations might otherwise have denied it. But it does mean that the constitutional framework the charter represents is more fragile than its proponents claim, and that the political divisions around its implementation, which have already begun to manifest in the BNP's reluctance to constitute the Constitution Reform Council, are likely to persist and deepen as the implementation process proceeds.

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2.3 The Specific Constitutional Proposals: A Detailed Analysis

The forty-seven specific constitutional changes proposed in the July Charter, and the referendum that approved them in February 2026, represent the most significant formal transformation of Bangladesh's constitutional framework since the Fifteenth Amendment of 2011. A careful analysis of each major proposal, examining its constitutional rationale, its comparative precedents, its likely practical effects, and its relationship to the theoretical framework of constitutional consolidation developed in this part, reveals both the ambition and the limitations of the reform agenda.

The proposal to recognise all mother languages spoken in Bangladesh as state languages alongside Bengali is constitutionally significant, philosophically important, and practically complex. Constitutionally, it represents a partial reversal of the linguistic nationalism that has characterised Bangladesh's constitutional identity since 1972, when Bengali was designated the sole state language and the country's identity was defined primarily in terms of Bengali ethnicity and language. Philosophically, it reflects a more pluralist understanding of national identity, acknowledging that Bangladesh's approximately 45 indigenous ethnic groups, whose languages include Chakma, Marma, Tripura, Garo, Santali, and many others, are an integral part of the national community rather than peripheral minorities who must assimilate to the Bengali mainstream. Practically, the implementation of this provision would require substantial institutional development: government services in minority languages, education in those languages, and legal protections against discrimination based on language use. The Sri Lankan and Canadian experiences with official bilingualism and multiculturalism offer both encouraging precedents and cautionary tales about the gap between constitutional recognition and genuine linguistic equality.

The proposal to replace the nationality designation from Bengali to Bangladeshi, while apparently merely terminological, has deeper constitutional and political significance. The current constitution's use of Bengali as the nationality descriptor reflects the Bengali nationalist ideological framework within which the 1972 constitution was conceived, a framework that defined national identity primarily in terms of linguistic and ethnic Bengaliness. The shift to Bangladeshi as the national identifier acknowledges the ethnic, linguistic, and religious plurality of the actual population of the territory of Bangladesh, which includes not only ethnic Bengalis but also the Bihari community, the indigenous hill peoples, and recent generations of citizens whose sense of national identity is primarily territorial rather than ethnolinguistic. The political symbolism of this change is considerable: it represents an implicit acknowledgment that the Bengali nationalist framework that shaped the original constitution was insufficiently inclusive, and it opens space for a more genuinely pluralist constitutional identity.

The proposal for enhanced presidential powers represents one of the most theoretically interesting and politically contested elements of the reform package. Bangladesh's 1972 constitution established a parliamentary system in which the President was primarily a ceremonial head of state with little independent executive authority. The Fifteenth Amendment of 2011 reinforced this arrangement by reducing even the limited independent presidential authority that had survived previous amendments. The proposed reforms would expand the President's independent authority in several significant areas: the appointment of the heads of

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constitutional bodies including the National Human Rights Commission, the Information Commission, the Press Council, the Law Commission, and the Bangladesh Energy Regulatory Commission would become presidential prerogatives exercisable without the binding advice of the Prime Minister. Additionally, the President's power to withhold assent from legislation, to call for a referendum on constitutional amendments, and to dissolve parliament under certain circumstances would be enhanced.

The theoretical justification for enhanced presidential authority in a parliamentary system is the creation of an additional horizontal accountability mechanism that is insulated from parliamentary majority control. If the President, unlike the Prime Minister, does not depend on the confidence of the parliament for the continuation of office, and if the President has meaningful authority over the appointment of key constitutional officers, then the President can provide a check on the exercise of parliamentary majority power that is not otherwise available in a pure Westminster-style system. This reasoning draws on the concept of constitutional guardianship developed in the work of Carl Schmitt, who argued in his 1931 essay The Guardian of the Constitution that every constitutional order requires a guardian who stands above ordinary political competition and can intervene to protect the constitutional framework when it is threatened.

Schmitt's own theory of guardianship, which he developed as an argument for presidential power against parliamentary sovereignty in the specific context of the Weimar Republic's constitutional crisis, is, of course, deeply problematic in its political implications: Schmitt himself embraced the Nazi regime. But the underlying constitutional problem he identified, the problem of who guards the guardians, is genuine and has been addressed by contemporary constitutional theorists through more democratic means. The concept of a constitutional guardian in contemporary constitutional design is typically institutionalised through two mechanisms: an independent constitutional court with the power to strike down unconstitutional legislation, and an independent head of state with sufficient autonomous authority to resist pressure from the parliamentary majority. Bangladesh's current reform proposals address both of these mechanisms, though imperfectly and incompletely.

The proposal for prime ministerial term limits deserves extended analysis because it addresses the constitutional pathology that was most directly responsible for the Hasina government's trajectory toward authoritarian consolidation. The specific proposal, that no individual may serve as Prime Minister for more than ten years in total, is a meaningful but not entirely adequate response to the structural problem it addresses. The ten-year limit is itself a significant achievement by the standards of Bangladesh's constitutional history, since it would have prevented the twenty-year project of authoritarian entrenchment that Hasina undertook. However, ten years is also a substantial period within which a determined leader with a parliamentary majority can accomplish an enormous amount of constitutional subversion if the institutional constraints on executive power are insufficient. The South Korean presidential system imposes a single five-year term limit precisely because the architects of South Korea's 1987 democratic constitution recognised that even five years is long enough for a determined executive to cause serious constitutional damage.

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The proposal to amend Article 70 of the constitution to allow members of parliament to vote independently on all matters except budgetary and confidence votes is perhaps the most immediately significant reform from the perspective of parliamentary democracy's functional effectiveness. Article 70, which provides that a member of parliament shall vacate his seat if he votes against the direction of his party in a parliamentary vote, has been one of the most structurally damaging provisions of the Bangladesh Constitution. It effectively transformed parliament from a deliberative body in which individual representatives could exercise independent judgment into a rubber stamp for party leadership decisions. The amendment proposed in the July Charter would permit independent voting on all matters except the two categories where party cohesion is constitutionally justified: budgetary votes, where fiscal coherence requires collective responsibility, and confidence votes, where the parliamentary system's fundamental logic requires that governments command the confidence of parliament.

The comparative literature on anti-defection provisions in parliamentary systems is instructive. India's anti-defection provision, contained in the Tenth Schedule of the Indian Constitution, has been extensively debated and litigated, with many commentators arguing that it has produced a culture of parliamentary submissiveness that is destructive of meaningful legislative deliberation. Bangladesh adopted an even more stringent version of this provision, and its effects on parliamentary culture have been correspondingly more damaging. The proposed reform would not eliminate the anti-defection principle entirely, which would create real problems for governmental stability in a first-past-the-post parliamentary system, but would significantly narrow its scope to the categories of votes where collective responsibility is most essential.

The proposal to establish a bicameral legislature, with an upper house of 100 seats distributed proportionally among parties receiving votes in the general election, is one of the most structurally significant proposals in the entire reform package. Its implementation would require not merely a constitutional amendment but a fundamental reconceptualisation of how political representation works in Bangladesh, because the upper house's proportional basis would introduce a fundamentally different democratic logic alongside the majoritarian logic of the lower house. The Sartori-Taagepera model of electoral system effects predicts that the addition of a proportional upper house to a majoritarian lower house system would, over time, tend to moderate the political outcomes of the overall legislative system, giving smaller parties more legislative influence than the lower house's electoral system alone would produce and providing incentives for coalition-building and compromise that pure majoritarian systems do not generate.

The proposal for a caretaker government system to oversee elections, which was one of the most contested elements of the July Charter, addresses what has been perhaps the most persistent source of constitutional crisis in Bangladesh's post-1991 democratic experience. The original caretaker government system, established by the Thirteenth Amendment of 1996, created an institutional mechanism for ensuring the neutrality of the governmental machinery during elections by temporarily transferring executive power to a non-partisan caretaker administration. The Fifteenth Amendment of 2011 abolished this system, replacing it with a provision that elections would be held under the incumbent government, a change that proved catastrophically damaging to the credibility and conduct of subsequent elections. The Supreme Court's Appellate Division ruling in November 2025, reinstating the caretaker system prospectively from the next

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election cycle, and the referendum's endorsement of the caretaker provision, represent a decisive political and legal consensus that the caretaker system should be restored.

The specific design of the reinstated caretaker system is, however, more complex than the original Thirteenth Amendment arrangement, and the design choices are consequential. The July Charter proposes that the caretaker government be formed by consensus among the ruling party, the main opposition, and the second opposition party, a tripartite arrangement that differs significantly from the Thirteenth Amendment's provision for a Chief Adviser drawn from the retired Chief Justices. The tripartite consensus model has the advantage of requiring political agreement across party lines before a caretaker government can be formed, which means that no single party can impose its preferred caretaker arrangement on the others. But it also creates a potential deadlock mechanism: if the three parties cannot reach agreement on the composition of the caretaker government, the entire electoral process may be paralysed. The design of decision rules for situations where consensus cannot be achieved is a critical constitutional engineering challenge that the July Charter's language does not fully resolve.

CHAPTER THREE: THE FEBRUARY 2026 REFERENDUM AND THE CONSTITUTIONAL CRISIS OF IMPLEMENTATION

3.1 The Constitutional Architecture of the Referendum

The referendum held on 12 February 2026, concurrently with the 13th national parliamentary election, was itself a constitutional novelty whose legal foundations were contested from the outset. The referendum was authorised not by a constitutional provision but by a presidential order, the July National Charter Constitutional Amendment Implementation Order, 2025, issued on 13 November 2025 under the authority of the interim government. The constitutional basis for this order was itself disputed: Bangladesh's constitution, even in its amended form, did not clearly authorise the interim government to bypass the normal constitutional amendment procedures by submitting constitutional reforms to a popular referendum without prior parliamentary approval.

This procedural controversy is not merely a technical legal dispute. It goes to the heart of the legitimacy question that has been examined throughout this textbook. A constitutional amendment process that bypasses the constitutionally prescribed procedures, even if it achieves an outcome that is genuinely more popular and more democratically legitimate than the outcome that the prescribed procedures would produce, creates a precedent for constitutional shortcuts that can be exploited by less scrupulous actors in the future. The Appellate Division's prior ruling in November 2025, which restored the caretaker government system and reinstated the referendum requirement for constitutional amendments, added a further layer of legal complexity, because the referendum requirement the court mandated was itself the subject of ongoing litigation.

The ballot paper itself was a model of constitutional ambiguity. Voters were asked to approve or reject a bundled package of reform proposals rather than voting on each proposal individually.

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This bundling meant that a voter who strongly supported some reforms but had reservations about others faced an all-or-nothing choice, which is a well-known problem in referendum design. The bundling also made it impossible to interpret the referendum result as a clear mandate for any specific proposal: the 61 percent yes vote could reflect enthusiastic support for the entire package, reluctant acceptance of the overall direction of reform despite reservations about specific provisions, or simply the absence of a compelling alternative.

The result, that 61 percent of voters endorsed the charter on a 60 percent turnout, is a constitutionally meaningful mandate, though not an overwhelming one. In comparative perspective, it compares reasonably favourably with other constitutional referendums in countries with comparable political dynamics: Ireland's constitutional referendum on same-sex marriage in 2015 achieved 62 percent approval, Kenya's constitutional reform referendum of 2010 achieved 67 percent approval, and Colombia's peace accord referendum of 2016 was narrowly defeated with 49.8 percent approval despite considerable expectations of success. The Bangladesh result is therefore neither a ringing popular endorsement nor a contested mandate: it represents a solid majority in favour of constitutional reform, sufficient to create a genuine political obligation on the new parliament to implement the charter's provisions, but not so overwhelming as to preclude serious political contestation about the pace and completeness of implementation.

3.2 The BNP's Refusal and the Constitutional Crisis It Created

The immediate constitutional crisis that erupted in the days following the February 2026 election warrants detailed examination, both because of its immediate political consequences and because of what it reveals about the structural dynamics of Bangladesh's constitutional politics. On the day of the new parliament's first sitting, newly elected BNP legislators refused to take the second oath that would have constituted them as members of the Constitution Reform Council mandated by the referendum. Their stated reason was that the council had not been formally approved by parliament, and therefore the oath lacked constitutional foundation.

This objection has a surface plausibility that demands engagement. The July National Charter Implementation Order, the presidential instrument that authorised the referendum and the formation of the Constitution Reform Council, was an executive order rather than an act of parliament. In Bangladesh's constitutional system, which is based on the principle of parliamentary supremacy, the question of whether an executive order can establish an institution with the authority to amend the constitution is a genuine legal question. The High Court had previously declared unconstitutional key parts of the Fifteenth Amendment, including the abolition of the caretaker government, and had reinstated the referendum requirement for constitutional amendments. These rulings created a legal environment in which the constitutional validity of the Implementation Order itself was uncertain, making it legally defensible for the BNP to decline to take oaths of membership in an institution whose constitutional foundation was contested.

However, the political context of the BNP's refusal is equally important and cannot be separated from its legal rationalisation. The BNP had, throughout the election campaign, publicly endorsed the July Charter and encouraged its supporters to vote yes in the referendum. Tarique Rahman's

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personal endorsement of the yes position just two weeks before the vote was decisive in securing BNP voters' approval of the charter. For the BNP to have publicly endorsed a constitutional package and then, immediately upon winning an election, to refuse the first institutional step required for its implementation, was a political maneuver that the opposition correctly characterised as a betrayal of the referendum mandate.

Khandakar Tahmid Rejwan's analysis for Al Jazeera, written in the days immediately following the oath-taking ceremony, identified what he called the core disagreement: the dispute is not about whether to implement the charter but about how, when, and to what extent the reforms will be implemented. This framing suggests that the BNP's refusal was not a principled constitutional position against the charter as such but a negotiating posture aimed at controlling the pace and terms of implementation. From a constitutional theory perspective, this is a troubling distinction: using procedural constitutional objections as bargaining chips in political negotiations about the extent of constitutional reform is precisely the kind of constitutional instrumentalism that undermines the rule of law's foundational premise, which is that constitutional obligations are not optional depending on political convenience.

The Jamaat-e-Islami and the National Citizen Party, which together had significantly fewer parliamentary seats than the BNP, found themselves in the unusual position of demanding constitutional implementation while the dominant governing party resisted it. This inversion of the normal political dynamic, in which a governing majority typically controls the pace of constitutional reform, reflects the distinctive character of Bangladesh's post-referendum situation. The referendum had created a constitutional obligation that the new parliament was legally bound to honour, but the new parliament's dominant party was unwilling to honour that obligation in the form and timeline the referendum had established. Whether this standoff would be resolved through negotiation, litigation, or political pressure from civil society remained, at the time of this writing in April 2026, deeply uncertain.

3.3 Constitutional Litigation and the Role of the Courts

The intersection of electoral politics and constitutional litigation in Bangladesh's post-election environment is, as the Daily Star commentary correctly observed, creating a situation in which the timeline of reform is controlled by litigation rather than by reformers. This is a genuinely dangerous development from the perspective of constitutional consolidation, because constitutional uncertainty breeds political opportunism: when the legal status of reform commitments is unclear, political actors have both the incentive and the opportunity to delay, dilute, or undermine those commitments.

The specific litigation landscape as of early 2026 included several parallel proceedings before the Bangladesh Supreme Court, each touching on different dimensions of the constitutional reform process. The challenge to the Fifteenth Amendment's provisions, including the abolition of the caretaker system and the anti-defection provisions, remained partially sub judice even after the Appellate Division's November 2025 ruling. The constitutional validity of the July National Charter Implementation Order itself had not been definitively resolved. And new litigation challenging specific provisions of the July Charter was being prepared by various parties who

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found particular reform proposals inconsistent with their constitutional rights or political interests.

This proliferation of constitutional litigation is not inherently problematic: a robust constitutional litigation culture in which courts are asked to resolve constitutional disputes is a sign of constitutional vitality, not constitutional crisis. The problem is when constitutional litigation becomes a tool of political obstruction rather than a mechanism of constitutional accountability. The distinction between legitimate constitutional challenge and abusive constitutional litigation is not always easy to draw, but the criterion is whether the litigation is primarily aimed at securing compliance with constitutional principles or primarily aimed at delaying or preventing compliance for political advantage. The early signs from the BNP's behaviour, using constitutional process arguments to delay the formation of a reform council that its own public commitments had endorsed, suggest that the latter motivation is at least partly at work.

The Supreme Court's role in resolving these constitutional uncertainties is therefore critically important. The court's institutional credibility and independence, which the July Charter reforms were specifically designed to strengthen, is being tested at the moment of its constitution: if the court's independence from the governing party cannot be established during the period of constitutional transition, then the promise of judicial independence that the charter represents cannot be realised. The appointment of new Supreme Court justices in the period immediately following the election will be a crucial early test of whether the BNP government is willing to accept genuine judicial independence or whether it will seek to appoint justices whose political sympathies align with the governing party's interests.

The emerging constitutional jurisprudence on the relationship between presidential orders, parliamentary authority, and referendum results is largely uncharted territory for Bangladesh's courts. The courts will need to develop principled frameworks for several important questions: whether a referendum result creates a direct constitutional obligation on parliament independent of formal legislative implementation; whether the Implementation Order has the constitutional status necessary to create a binding obligation to form the Constitution Reform Council; and what remedies are available if the governing party fails to comply with its referendum commitments. Each of these questions requires the court to navigate the tension between strict constitutional positivism, which might suggest that only formally enacted law creates binding constitutional obligations, and a more purposive constitutional interpretation, which would give effect to the clear democratic mandate of the referendum even in the absence of formal legislative implementation.

CHAPTER FOUR: COMPARATIVE CONSTITUTIONAL TRANSITIONS AND THE LESSONS THEY OFFER BANGLADESH

4.1 South Africa: The Gold Standard and Its Limits

South Africa's constitutional transition of 1993 to 1996 has been repeatedly cited throughout this textbook and in the comparative constitutional literature as the paradigm case of successful post-

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authoritarian constitutional consolidation. The ANC's Nelson Mandela government, confronted with the challenge of building a genuine constitutional democracy on the foundations of apartheid's institutional legacy, made choices that have become the template for constitutional transition theory. Understanding both why those choices succeeded and where they have since proven vulnerable provides essential comparative perspective for Bangladesh's situation.

The foundational insight of the South African transition was the deliberate choice to pursue negotiated inclusion rather than revolutionary displacement. Despite the ANC's decisive moral and political authority as the liberation movement that had led resistance to apartheid, Mandela and his colleagues recognised that a constitution written exclusively by the victorious liberation movement would lack the legitimacy necessary for durable constitutional commitment across racial and political lines. The Codesa negotiations of 1991 to 1993, the constitutional principles agreed between the ANC and the National Party in 1993, and the deliberative process of the Constitutional Assembly of 1994 to 1996 were all designed to ensure that the new constitutional framework was broadly owned rather than imposed by the politically dominant force.

The result was a constitution of remarkable quality, breadth, and normative ambition. The South African Constitution of 1996 includes a comprehensive bill of rights that protects civil, political, economic, social, and cultural rights; establishes an independent constitutional court as the supreme interpreter of the constitution; creates a range of independent institutions supporting democracy, including the Human Rights Commission, the Public Protector, and the Auditor-General; and contains several innovative provisions not found in other constitutions, including the right to access information held by the state, the right to administrative justice, and the right to have the environment protected for the benefit of present and future generations.

The South African Constitutional Court, under the successive leadership of Chief Justices Langa, Ngcobo, Moseneke, Mogoeng, and Zondo, developed a sophisticated and rights-protective constitutional jurisprudence that has been enormously influential in comparative constitutional law. The court's treatment of economic and social rights, particularly its landmark judgment in Government of the Republic of South Africa v Grootboom, which required the government to take reasonable measures to progressively realise the right of access to adequate housing, established a model for the judicial enforcement of economic and social rights that has been studied and applied in many other jurisdictions, including by Bangladesh's own Supreme Court in its jurisprudence on environmental rights and the rights of vulnerable groups.

What South Africa's experience also reveals, however, is that even the highest quality constitutional framework cannot guarantee constitutional consolidation in the absence of sustained political commitment to constitutional norms from governing elites. The Zuma presidency of 2009 to 2018 demonstrated that the constitutional framework established with such care in 1996 was vulnerable to systematic erosion through the appointment of politically loyal officials to independent institutions, the manipulation of the security and intelligence services for partisan purposes, and the corruption of the governing ANC's internal democratic processes. The Zondo Commission's extensive documentation of state capture under Zuma, and the Constitutional Court's landmark ruling in Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma, which held that Zuma's refusal to appear before the

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commission constituted contempt of court and upheld his imprisonment, represent both the depth of the constitutional crisis and the constitutional framework's ultimate resilience.

Bangladesh can draw several specific lessons from South Africa's experience. First, the quality of constitutional design matters enormously: a well-designed constitution with strong institutional architecture is more resistant to constitutional erosion than a poorly designed one, even if it cannot guarantee immunity. Second, the independence and capacity of the Constitutional Court, or in Bangladesh's case, the Supreme Court, is the single most important institutional variable in constitutional consolidation: a court that lacks either independence or capacity cannot provide the backstop protection against constitutional erosion that the constitutional framework requires. Third, the culture of civil society engagement with constitutional norms, including the development of a robust legal profession with constitutional litigation capacity and a vibrant civil society that monitors constitutional compliance, is an essential complement to formal institutional architecture.

4.2 Spain's Consensual Transition: The Pact of Forgetting and Its Constitutional Consequences

Spain's transition from the Franco dictatorship to constitutional democracy between 1975 and 1982 offers a different model of post-authoritarian constitutional consolidation, one that is illuminating for Bangladesh in part because of the deliberate choices the Spanish transition made about accountability for past human rights violations. The Spanish transition was built on what scholars have called the pact of forgetting, a deliberate political choice to avoid prosecution of those responsible for Franco-era crimes in exchange for the military and the Francoist political establishment's acceptance of democratic transition.

This choice had profound constitutional consequences. The Spanish Constitution of 1978, a product of consensus among major political parties including representatives of the Francoist establishment, was designed to provide a durable framework for democratic governance rather than to express the ideological vision of any single political force. The constitution's provisions on the territorial organisation of the state, particularly the concept of autonomias that created substantial regional self-government for Catalonia, the Basque Country, and other regions, represented a constitutional compromise between the unitary nationalism of the Francoist tradition and the federal or independence demands of the peripheral nationalisms that had been suppressed under Franco.

The pact of forgetting had, however, serious long-term consequences that Spain is still grappling with four decades after the transition. The systematic impunity for Franco-era crimes created an unresolved historical grievance that periodically surfaces in Spanish politics, most recently in the debate over the democratic memory law of 2022 that sought to provide symbolic recognition to the victims of Francoism without creating criminal accountability for perpetrators who were long dead. More immediately relevant for Bangladesh, the failure to prosecute security force members responsible for repression during the transition period created a precedent of security force immunity that has proved difficult to overcome in subsequent democratic governments' efforts to establish effective oversight of the military and intelligence services.

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Spain's experience suggests that the choice to defer or avoid accountability for past human rights violations, even when made for pragmatic reasons of transition management, creates constitutional legacies that are difficult and painful to address later. For Bangladesh, which faces the specific challenge of addressing accountability for the July 2024 killings, for enforced disappearances during the Hasina period, and for the broader pattern of security force abuses that extended across multiple governments, the Spanish precedent is both cautionary and informative. The International Crimes Tribunal's jurisdiction, the ICC investigation, and the various accountability mechanisms discussed in Part Eleven of this textbook represent Bangladesh's attempt to avoid the pact of forgetting that Spain chose: whether this attempt can succeed without destabilising the political conditions for democratic consolidation is one of the most difficult questions facing the country's constitutional transition.

4.3 Indonesia's Reformasi and the Challenge of Institutional Transformation

Indonesia's constitutional transition following the fall of Suharto in 1998, known as Reformasi, offers perhaps the most directly comparable case for Bangladesh among post-authoritarian transitions in Asia. Both countries were characterised by long periods of authoritarian rule under leaders with personal cults of considerable power, both had constitutional frameworks that were designed primarily as instruments of authoritarian governance rather than genuine constraints on executive power, and both experienced mass popular uprisings that delegitimised the authoritarian order and created space for constitutional transformation.

Indonesia's Reformasi process produced a series of constitutional amendments between 1999 and 2002 that fundamentally restructured the country's political system: direct presidential elections replaced the MPR's presidential selection process, the military's reserved parliamentary seats were abolished, judicial review was established for the first time through the creation of the Mahkamah Konstitusi (Constitutional Court), a National Human Rights Commission was strengthened, and the principle of regional autonomy was substantially expanded. These changes did not produce a new constitutional text but rather comprehensively amended the existing 1945 constitution, which had been so thoroughly transformed that it functioned effectively as a new constitutional document while maintaining continuity with the founding instrument.

The Indonesian transition's most significant achievement was the peaceful and constitutionally orderly transfer of power through multiple electoral cycles, beginning with the landmark 2004 elections in which Susilo Bambang Yudhoyono defeated the incumbent Megawati Sukarnoputri in a direct presidential election. This achievement was particularly remarkable given that Indonesia had never previously experienced a peaceful transfer of power between competing political parties. The democratic culture that the Reformasi constitutional changes helped to create proved durable enough to survive the populist challenges of Prabowo Subianto's campaigns in 2014, 2019, and 2024, and the institutional tensions created by Jokowi's governing style.

However, Indonesia's democratic consolidation has remained incomplete in important respects that are directly relevant to Bangladesh. The military's political influence, while formally constrained by the abolition of reserved parliamentary seats, remained substantial through informal networks of patronage and institutional connection. Judicial independence remained

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fragile, with corruption within the judicial system a persistent problem despite the creation of the Constitutional Court. Freedom of expression, while substantially expanded from the Suharto era, faced new challenges from defamation laws, blasphemy prosecutions, and the increasing power of digitally organised religious conservative movements. V-Dem's assessments of Indonesia's democratic quality showed improvement in the early Reformasi period followed by gradual stagnation and partial regression, a trajectory that scholars of Indonesian politics have attributed to the capture of democratic institutions by oligarchic interests rather than to any dramatic reversal of formal democratic commitments.

The Indonesian trajectory illustrates what scholars of democratic consolidation call the problem of oligarchic capture: in societies with highly unequal distributions of economic power, the formal mechanisms of democratic governance tend to be captured by economic elites who use their resources to shape electoral outcomes, influence legislation, and shield themselves from accountability for constitutional violations. Bangladesh has severe problems of economic inequality and oligarchic capture, with its garment industry and financial sector elites having exercised profound influence over both the Hasina and the previous BNP governments. The constitutional reform process has not seriously engaged with the structural economic conditions that make oligarchic capture possible, and the July Charter's focus on formal institutional design rather than political economy represents a significant gap in the reform agenda.

4.4 Myanmar: The Catastrophic Failure of Constitutional Transition and Its Lessons

No comparative analysis of constitutional transition in South and Southeast Asia can avoid the case of Myanmar, whose catastrophic constitutional experience since 2021 represents the worst-case scenario for every fragile democracy in the region. Myanmar's 2008 constitution, drafted under military auspices and designed to perpetuate military dominance even while creating the formal apparatus of civilian governance, was never a genuine constitutionalist document. The Aung San Suu Kyi government's period of nominal civilian governance between 2016 and 2021 was constrained from the outset by constitutional provisions that reserved twenty-five percent of parliamentary seats for the military and gave the military commander direct control over the defence, interior, and border affairs ministries.

The February 2021 coup that ended Myanmar's democratic experiment represented a textbook case of authoritarian reversion in Ginsburg and Huq's taxonomy: a rapid, near-complete collapse of democratic institutions through military action. The subsequent descent into civil war, systematic atrocities against civilian populations, and the emergence of significant armed resistance has destroyed the constitutional and institutional infrastructure that would be needed for any eventual democratic transition. Myanmar's experience is a reminder, if one were needed, that constitutional failure can be total rather than merely partial, and that the consequences of total constitutional failure are catastrophic for the human beings who live within the failing constitutional order.

The lesson for Bangladesh is not that Bangladesh faces a comparable risk of total constitutional collapse: the conditions that produced Myanmar's catastrophe, specifically the military's constitutional design of the 2008 constitution to preserve its power and the existence of ethnic armed organisations with decades of experience and territorial control, do not exist in

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Bangladesh. But Myanmar's example does illustrate the importance of ensuring that constitutional transition processes are genuine and comprehensive rather than superficial: the 2008 constitution's formal democratisation without substantive civilian control over the military proved to be not a stable halfway house but a precarious arrangement that the military could easily reverse when it chose. Bangladesh's history of military involvement in constitutional politics makes the question of genuinely subordinating the military to constitutional civilian authority particularly important.

CHAPTER FIVE: THE DEEP STRUCTURE OF BANGLADESH'S CONSTITUTIONAL PATHOLOGY AND THE CONDITIONS FOR GENUINE REFORM

5.1 The Political Economy of Constitutional Failure

Throughout the preceding parts of this textbook, the analysis has repeatedly returned to a fundamental structural observation: Bangladesh's constitutional failures cannot be understood purely as failures of institutional design or political culture. They are also, and perhaps primarily, failures produced by the specific political economy of Bangladesh's development. Understanding these political economy dimensions is essential for any realistic assessment of the prospects for genuine constitutional reform.

Bangladesh's political economy is characterised by several structural features that create systematic pressures against constitutional compliance and institutional independence. The first is the extreme concentration of economic power in a small number of industrial and financial families who have historically used political access as the primary mechanism for accumulating and protecting their economic advantages. The garment industry's history of using political connections to resist labour organising, environmental regulation, and safety enforcement is a paradigm case of this dynamic. The banking sector's history of politically connected defaulters who have been shielded from legal accountability by their political relationships is another. The construction and infrastructure sectors, in which government contracting provides enormous opportunities for politically connected firms to extract rents from public expenditure, complete the picture.

This concentrated economic power creates structural incentives for business elites to invest in political capture rather than in the institutional development that would make governance more predictable and rules-based. When the return on investment from political connection is higher than the return on investment from productive activity, the rational strategy for economic elites is to capture political institutions rather than to support their genuine independence. This dynamic does not require any malicious intent on the part of individual business people or politicians: it is a structural feature of an economy in which the state's discretionary power over economic outcomes is large and institutional constraints on the exercise of that discretionary power are weak.

The constitutional reform agenda embodied in the July Charter has not, it must be said, seriously engaged with this structural dimension of constitutional failure. The reforms focus almost

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entirely on formal institutional design, the structure of parliament, the appointment of constitutional officers, the independence of the judiciary, and the electoral system. These are important reforms, but they do not address the underlying political economy that makes these institutions vulnerable to capture. Without complementary reforms to reduce the state's discretionary economic power, to increase transparency in government contracting and public spending, and to create genuinely effective anti-corruption mechanisms, the reformed constitutional institutions will face the same structural pressures that have undermined previous generations of constitutional reforms.

The Anti-Corruption Commission reform ordinance of 2025, which was one of the measures at risk of not being ratified by the new parliament, represented a partial attempt to address this dimension. The ordinance expanded the ACC's powers to allow direct case filing, to cover financial crimes abroad, and to increase commission membership. These are significant improvements if implemented, but they do not address the fundamental structural problem: a commission that depends on political appointments for its leadership and that operates within a political economy that generates constant pressure for selective enforcement of anti-corruption norms is unlikely to provide the systemic accountability that genuine constitutional consolidation requires.

Daron Acemoglu and James Robinson's influential framework, developed in Why Nations Fail and extended in their subsequent work, provides a useful analytical lens for this dimension of Bangladesh's constitutional situation. Acemoglu and Robinson distinguish between extractive institutions, which concentrate power and wealth in the hands of a small elite, and inclusive institutions, which provide broad-based access to economic opportunity and political participation. They argue that extractive institutions are self-reinforcing: those who benefit from them have both the resources and the incentive to prevent the emergence of more inclusive alternatives, creating a political equilibrium in which institutional improvement is systematically resisted. Bangladesh's political economy, as this textbook has documented throughout its pages, displays many of the characteristics of extractive institution dynamics, and the constitutional reform agenda must be understood and evaluated against this structural background.

5.2 The Historical Construction of Constitutional Culture and Its Absence

Constitutional culture, understood as the set of widely shared values, expectations, and practices that give constitutional norms their practical effectiveness, is not a given in any society. It is constructed over time through a combination of institutional experience, political socialisation, legal education, and the gradually internalised expectation that constitutional rules will be consistently applied. Bangladesh's constitutional history, characterised by frequent and dramatic constitutional violations by political leaders, has systematically undermined the construction of constitutional culture at every level of political life.

At the elite level, Bangladesh's political leaders have learned from their own experience and from observing the behaviour of their predecessors that constitutional rules are instruments to be deployed when convenient and set aside when inconvenient. Sheikh Mujibur Rahman's transformation of the constitutional order through the Fourth Amendment was possible in part because the constitutional culture of 1975 Bangladesh lacked sufficient depth to generate

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effective resistance. Ziaur Rahman and Ershad's martial law periods reinforced the lesson that military power could trump constitutional procedure. The Hasina government's systematic erosion of democratic norms through the Fifteenth Amendment, the Digital Security Act, and the manipulation of the electoral machinery demonstrated that constitutional subversion could be accomplished incrementally, through formally legal means, without triggering the kind of popular resistance that outright unconstitutional action would have produced.

At the popular level, successive experiences of constitutional failure have produced a complex combination of democratic aspiration and institutional cynicism that is characteristic of what scholars of post-authoritarian politics call traumatised democracy. Citizens in Bangladesh aspire deeply and genuinely to constitutional government, as the July uprising demonstrated with unmistakable clarity. But they have also learned from experience that constitutional promises are often not honoured, that institutional independence is frequently nominal, and that the gap between constitutional aspiration and political reality is large and persistent. This combination of aspiration and cynicism creates a political culture that is easily mobilised for democratic protest but struggles to maintain the sustained engagement with constitutional processes that institutional consolidation requires.

The construction of constitutional culture in Bangladesh requires deliberate investment across multiple dimensions. Legal education must be reformed to produce lawyers, judges, and civil servants who have genuine internalised commitment to constitutional norms rather than merely instrumentalist relationships to legal rules. The judiciary must develop and publicise a principled jurisprudence of constitutional rights and institutional independence that demonstrates the courts' genuine commitment to constitutional values. Civil society organisations, bar associations, law faculties, human rights groups, and media organisations must develop sophisticated constitutional literacy and the capacity to monitor constitutional compliance and mobilise public pressure for constitutional accountability. Electoral processes must be administered with demonstrated impartiality so that citizens develop confidence that constitutional rules for managing political competition will be consistently applied.

None of these developments can be produced by constitutional amendment alone. They require sustained commitment and investment from political elites, judicial leadership, civil society, and the international community over a period of years or decades. Bangladesh's history suggests that this sustained commitment has rarely been forthcoming, and the early signs from the post-election period, including the governing party's resistance to the Constitution Reform Council and the threat to legislative reforms through non-ratification of ordinances, are not encouraging. But constitutional culture is not static, and the July uprising demonstrated that Bangladesh's civil society and its young people in particular have both the commitment and the courage to demand constitutional accountability from their political leaders.

5.3 The Gender Dimension of Constitutional Failure

The constitutional reform agenda's treatment of gender equality deserves sustained critical examination because it reveals with particular clarity the gap between constitutional aspiration and the structural conditions that give constitutional provisions their practical content. Bangladesh has, throughout its constitutional history, maintained formal commitments to gender

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equality that coexist with persistent and severe gender inequality in political, economic, and social life. Understanding why this gap has persisted, and what the July Charter's reform proposals do and do not do to address it, is essential for any complete analysis of Bangladesh's constitutional situation.

Bangladesh's constitution since 1972 has contained Article 28's prohibition on discrimination on grounds of sex, Article 29's guarantee of equality of opportunity in public employment, and the special provisions of Article 28(4) permitting affirmative action for women. These provisions have produced some positive outcomes: Bangladesh has in fact made impressive gains in several dimensions of gender equality, including girls' educational enrolment, maternal health outcomes, and women's participation in the labour force through the garment industry. But the constitutional commitment to gender equality has coexisted with persistent legal frameworks that discriminate against women, particularly in family law, inheritance, and the recognition of violence against women.

The National Consensus Commission's exclusion of the women's commission's recommendations from the July Charter's constitutional provisions is, as noted earlier in this chapter, a significant failure of the reform process. The women's commission had produced substantive proposals that went well beyond the July Charter's commitment to increased women's parliamentary representation. These proposals included, among other things, the constitutional entrenchment of women's equal rights in marriage, divorce, and inheritance; the elimination of reservations to CEDAW that undermine the constitution's equality commitments; the constitutional recognition of domestic violence as a rights violation; and the establishment of genuinely independent institutional mechanisms for enforcing women's constitutional rights.

The constitutional theory of gender equality has developed considerably in recent decades, moving beyond the formal equality model, in which women are simply treated the same as men without regard for structural differences in their social position, toward what Martha Albertson Fineman has called the vulnerability model and what Sandra Fredman has called substantive equality. These approaches recognise that constitutional gender equality requires not merely the removal of discriminatory legal provisions but the positive transformation of the structural conditions that produce gender inequality, including the unequal distribution of reproductive labour, the economic dependence that family law structures create, and the pervasive effects of gender-based violence. A constitutional framework that addresses these structural dimensions of gender inequality, rather than merely adding women to parliamentary seats while leaving the underlying structures unchanged, is what Bangladesh's constitutional reform process should aspire to produce.

The specific proposal to increase women's parliamentary representation through reserved seats, proposed as a gradual increase to 100 seats in the lower house, is a meaningful step, but it is not, by itself, a solution to the structural gender equality deficit. The existing reserved seat system has been criticised, with considerable justification, for producing women politicians who are selected by male party leaders and who therefore tend to be responsive to those leaders rather than to the women constituents whose interests they are nominally designed to represent. Making reserved seat members directly elected rather than party-nominated, or creating women's constituencies with direct electoral competition among women candidates, would produce more genuine gender

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representation than the party-nomination system, but this more substantive reform was not included in the July Charter.

5.4 The Minorities Question and the Limits of Constitutional Pluralism

Bangladesh's religious and ethnic minorities, including Hindus, Buddhists, Christians, and the indigenous peoples of the Chittagong Hill Tracts and other regions, have existed in a state of constitutional ambiguity throughout the country's history. The 1972 constitution's original secularism principle provided a formal framework for minority protection that was subsequently undermined by the Second Amendment's provision for Islam as the state religion, the Eighth Amendment's constitutional enshrinement of that provision, and the persistent pattern of minority persecution that characterised successive governments' actual practice regardless of their constitutional commitments.

The constitutional reform agenda's treatment of minorities reflects this ambiguity. The July Charter's replacement of secularism with pluralism as a foundational principle was defended, as noted earlier, as a more inclusive formulation that protects minority rights without the political toxicity of the secularism label. But the practical meaning of pluralism in Bangladesh's specific constitutional context depends entirely on how the term is interpreted and implemented, and the political forces that might interpret it in ways hostile to minority protection remain powerful within Bangladesh's political system.

The Chittagong Hill Tracts situation is particularly important and particularly unresolved. The CHT Accord of 1997, which ended two decades of armed insurgency in the region, established a framework for political autonomy and the protection of indigenous rights that has been only partially implemented. The constitutional reform proposals include provisions for strengthening local government and regional autonomy, but they do not directly address the specific commitments of the CHT Accord or the constitutional framework needed to honour those commitments fully. The indigenous peoples of the CHT and other regions continue to face land dispossession, military presence, and institutional marginalisation that are inconsistent with any meaningful constitutional commitment to pluralism.

The theoretical framework most relevant to Bangladesh's minorities question is what Kymlicka called multicultural citizenship in his foundational 1995 work, the idea that liberal democracy requires not merely the formal equality of all citizens but also special rights and institutional arrangements for national minorities, indigenous peoples, and other groups whose cultural survival depends on collective protections that individual rights alone cannot provide. Kymlicka distinguishes between polyethnic rights, which allow immigrant communities to maintain their cultural practices while integrating into the mainstream society, and self-government rights, which allow national minorities and indigenous peoples to govern themselves in accordance with their own traditions and laws in specific territorial domains. The CHT situation clearly implicates the self-government rights dimension: the indigenous peoples of the CHT are not immigrants to Bangladesh seeking accommodation within a mainstream culture but are peoples whose ancestors inhabited their territories before the creation of the Bangladeshi state, and whose self-government rights have been partially recognised by the CHT Accord but not fully implemented.

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CHAPTER SIX: THE FUTURE OF BANGLADESHI CONSTITUTIONALISM: THEORY, PRESCRIPTION, AND THE POLITICS OF REFORM

6.1 What Constitutional Consolidation Would Require

Drawing together the theoretical analysis and the historical and contemporary evidence examined throughout this textbook, it is now possible to sketch, with appropriate modesty about the limits of constitutional prediction, the conditions that would need to be met for Bangladesh's current constitutional transition to produce genuine consolidation rather than another iteration of the constitutional cycle of aspiration and disappointment.

The first and most fundamental requirement is sustained political will from governing elites to implement constitutional constraints on executive power even when those constraints operate against the governing party's immediate interests. This requires something that political science has traditionally found difficult to explain and even more difficult to produce: the internalisation of constitutional norms by political leaders to the point where constitutional compliance becomes a matter of genuine principle rather than merely an instrumental calculation. The theoretical literature on why governing elites sometimes honour constitutional constraints they could override is more modest in its conclusions than the aspirational rhetoric of constitutionalism would suggest: sustained constitutional compliance by governing elites is most likely when those elites face credible external enforcement mechanisms (including international pressure), when the costs of constitutional violation are clearly higher than the benefits, and when constitutional norms have been sufficiently internalised in the broader political culture that violation would impose severe political costs.

The second requirement is the development of genuinely independent constitutional enforcement institutions, primarily the Supreme Court but also the Election Commission, the Anti-Corruption Commission, the Human Rights Commission, and the other independent constitutional bodies whose appointments and operations are central to the July Charter's reform agenda. Independence of these institutions depends on appointment processes that are genuinely insulated from partisan influence, on financial autonomy that prevents governing parties from using budgetary control as a mechanism of institutional capture, and on legal and cultural protections for institutional officials who make decisions that displease the governing majority.

The third requirement is the development of a robust civil society that has both the constitutional literacy and the organisational capacity to monitor constitutional compliance and mobilise public pressure for constitutional accountability. Bangladesh's civil society, as the July uprising demonstrated, has considerable latent capacity for democratic mobilisation. Converting that capacity into sustained institutional engagement requires investment in legal education and public interest litigation capacity, in independent media that can provide accurate information about constitutional developments, and in civil society organisations that can maintain effective monitoring of governmental compliance with constitutional commitments over the long periods during which democratic complacency tends to set in.

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The fourth requirement is the development of an international dimension of constitutional accountability that supplements domestic enforcement mechanisms when those mechanisms fail. Bangladesh's experience with international human rights mechanisms, examined in Part Eleven of this textbook, suggests that external accountability can sometimes provide effective supplementary pressure for constitutional compliance when domestic mechanisms are inadequate. The ICC investigation into the July 2024 killings, the UN Human Rights Council's monitoring of Bangladesh's human rights situation, and bilateral diplomatic pressure from major donor countries all provide potential external accountability mechanisms that a properly constructed constitutional framework should be designed to leverage rather than resist.

6.2 The New Constitutional Text: Priorities and Design Principles

If Bangladesh is to produce a new constitutional text, or a comprehensively amended existing text, that can provide the framework for genuine constitutional consolidation, the analysis developed throughout this textbook suggests several design priorities that should guide the drafting process.

The first priority is the separation of powers and its effective institutionalisation. Bangladesh's constitutional history demonstrates with painful clarity the consequences of a formal separation of powers that lacks the substantive institutional architecture necessary to make the separation real. A Prime Minister who controls parliament through anti-defection provisions and who dominates the judicial appointment process is not genuinely checked and balanced by the formal existence of separate legislative and judicial branches. The reform proposals' attention to judicial independence, legislative autonomy, and the independent appointment of constitutional officers addresses this priority, but the specific implementation mechanisms matter enormously. The design of the Judicial Service Commission, the composition and powers of the proposed upper house, and the specific circumstances under which the President can exercise independent authority all require careful constitutional engineering informed by comparative experience.

The second priority is the rights framework and its justiciability. The July Charter's proposal to transform social and economic rights from directive principles into justiciable rights is constitutionally ambitious and socially important, but it requires careful attention to the standards of justiciability and the remedial framework. The comparative experience of the South African Constitutional Court's approach to social rights, Colombia's Constitutional Court's tutela jurisprudence, and the Indian Supreme Court's public interest litigation jurisprudence all offer models for how courts can enforce social rights in a principled way without claiming the democratic authority to determine social policy. Bangladesh's Supreme Court will need to develop its own approach, informed by these comparative models but adapted to Bangladesh's specific institutional context and resource constraints.

The third priority is electoral system reform. The July Charter's proposals on the caretaker government system and on the upper house's proportional representation are important, but they do not address the fundamental problems of Bangladesh's lower house electoral system: the first-past-the-post single-member constituency system that produces wildly disproportionate outcomes, the winner-takes-all dynamic that makes electoral manipulation enormously consequential, and the constituency-based incentive structure that encourages clientelism over

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policy-oriented political competition. A more substantive electoral reform agenda would consider proportional representation or mixed member proportional systems for the lower house as well, though the political feasibility of such reform is limited given the governing party's interest in the majoritarian system that produced its super-majority.

The fourth priority is the constitutional entrenchment of anti-corruption mechanisms. The constitutional reform agenda, as noted throughout this textbook, has not adequately addressed the structural political economy of corruption that has been central to Bangladesh's constitutional failures. Constitutional provisions that require transparent public contracting, that create powerful and genuinely independent anti-corruption institutions, that mandate financial disclosure for public officials, and that establish strong whistleblower protections would address this structural dimension more directly than institutional design reforms alone.

The fifth priority is constitutional durability and the amendment procedure. Bangladesh's constitution has proven extraordinarily easy to amend by any international comparison: the two-thirds parliamentary majority required for constitutional amendment has been achieved multiple times by governing parties with comfortable majorities, permitting successive governments to tailor the constitutional framework to their political interests. The July Charter's proposal to require upper house approval for constitutional amendments addresses this problem partially, but the design of the upper house as a 100-seat chamber with proportional representation means that a sufficiently dominant governing coalition could still achieve the necessary majority for amendment without requiring genuinely cross-partisan agreement. Stronger entrenchment mechanisms, including the referendum requirement for fundamental constitutional changes (which the Supreme Court's November 2025 ruling has now restored) and absolute prohibitions on the amendment of certain core constitutional provisions, would provide greater protection against constitutional subversion.

6.3 The Role of Constitutional Courts in Constitutional Consolidation

The role of Bangladesh's Supreme Court, and specifically its Appellate Division and High Court Division, in the process of constitutional consolidation cannot be overstated. In every successful case of constitutional consolidation that comparative scholarship has examined, including Germany after World War II, South Africa after apartheid, Colombia after the 1991 constitution, and Spain after Franco, the constitutional court played a central role in developing and enforcing the constitutional framework during the critical early period when political elites were most tempted to test the limits of constitutional constraints.

Bangladesh's Supreme Court has a complicated and somewhat contradictory constitutional history. On the positive side, the court has at various points produced genuinely important constitutional jurisprudence: the Eighth Amendment case of 1989, which held that even constitutional amendments are subject to judicial review if they conflict with the basic structure of the constitution, established a powerful doctrine of constitutional review that has been invoked by the court in subsequent cases. The High Court's ruling in 2024 striking down key provisions of the Digital Security Act as inconsistent with the constitutional guarantee of freedom of expression, delivered in the midst of the July uprising itself, demonstrated that the judiciary was capable of asserting constitutional principle even under political pressure. The Appellate

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Division's November 2025 ruling restoring the caretaker government system showed that the court could correct its own previous errors and provide meaningful constitutional guidance on fundamental questions of democratic governance.

On the negative side, the Supreme Court's history also includes periods of considerable subservience to executive power. The validation of successive martial law regimes, the acquiescence in the Fifteenth Amendment's concentration of power in the Prime Minister's office, and the slowness of judicial response to the systematic erosion of democratic norms during the 2009 to 2024 period all demonstrate that judicial independence is fragile and reversible, and that the specific circumstances of judicial appointment and the specific composition of the court at any given moment are critical variables in determining whether the court will function as a genuine constitutional guardian or as an instrument of executive legitimation.

The recent scholarship on judicial behaviour in constitutional transitions provides a framework for understanding when constitutional courts are likely to exercise genuine independence. Tom Ginsburg's important book Judicial Review in New Democracies demonstrated through cross-national empirical analysis that constitutional courts are most likely to exercise genuine independence when the political environment is characterised by genuine political competition, when the court's institutional legitimacy is sufficiently high that its decisions are likely to be obeyed, and when the court has tenure protection and financial independence that insulate its members from political pressure. These conditions are not currently fully met in Bangladesh: the political competition provided by the BNP's opposition of Jamaat-e-Islami and NCP is real but unequal, the court's legitimacy is substantial but has been damaged by past episodes of subservience, and the tenure and financial independence of judges, while formally provided for by the constitution, have been vulnerable to practical pressure through the promotion and confirmation process.

The appointment of the new Chief Justice and the Supreme Court judges in the months following the February 2026 election will therefore be one of the most consequential institutional decisions of the constitutional transition. If the BNP government uses its control over the appointment process to appoint justices who will defer to the governing majority's constitutional preferences, the result will be a court incapable of providing the institutional check on executive power that constitutional consolidation requires. If, on the other hand, the appointment process produces a court whose members are genuinely committed to constitutional principle and whose institutional independence from political pressure is credibly established, the court can play the central role in constitutional consolidation that its South African and Colombian counterparts have played in their respective transitions.

The July Charter's proposals for reforming the judicial appointment process, including the creation of a Judicial Service Commission and the involvement of multiple institutional actors in the selection process, are designed precisely to address this risk. Their implementation with genuine fidelity to the goal of judicial independence, rather than with the kind of formal compliance and substantive capture that characterised previous reform efforts, will be a critical test of the new government's constitutional commitment.

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6.4 Constitutional Epistemology and the Limits of Constitutional Knowledge

The analysis developed throughout this textbook, culminating in the prescriptions of this final part, is offered with a degree of epistemic humility that constitutional scholars sometimes fail to maintain. Constitutional theory, for all its analytical sophistication, is not a predictive science. The history of constitutional design is littered with confident predictions that proved wrong: constitutions that were expected to fail have proved remarkably durable, and constitutions that were designed with great care by distinguished experts have collapsed under political pressures that the designers did not anticipate or adequately address.

Bangladesh's constitutional situation is genuinely uncertain. The July uprising demonstrated capacities for democratic mobilisation that many observers had not expected and that political science has difficulty fully explaining. The NCC process, despite its limitations, produced a constitutional reform agenda that addressed many of the structural problems that previous reform efforts had ignored. The referendum, despite its procedural ambiguities, generated a clear popular mandate for constitutional change. And the post-election political dynamics, while worrying in their early manifestations, are not foreclosed: political actors who have hedged their constitutional commitments can, under sufficient political pressure from civil society and from international partners, choose to honour those commitments more fully than their initial behaviour suggested they would.

The concept that Robert Cover developed in his 1983 article Nomos and Narrative is useful here. Cover argued that law is not merely a system of rules but a world of normative meaning, a nomos, that is constructed and maintained through the stories, practices, and commitments of communities of legal interpretation. A constitution's effectiveness depends not merely on its formal provisions but on the existence of a community of commitment, including lawyers, judges, politicians, civil society actors, and ordinary citizens, that maintains the normative world the constitution describes through the daily practice of constitutional interpretation and application. The question for Bangladesh, ultimately, is whether such a community of commitment can be constructed and sustained: whether the extraordinary popular commitment to constitutional governance that the July uprising expressed can be translated into the more mundane but equally important practice of daily constitutional accountability that genuine constitutional culture requires.

CHAPTER SEVEN: UNAMENDABILITY, BASIC STRUCTURE, AND THE CONSTITUTIONAL LIMITS OF REFORM

7.1 The Doctrine of Constitutional Identity and Unamendable Provisions

One of the most important developments in comparative constitutional theory in recent decades has been the doctrine of constitutional identity and its relationship to the concept of unamendable constitutional provisions. The idea that certain constitutional provisions are so fundamental to a constitutional order's identity that they cannot be amended even through constitutionally prescribed amendment procedures, the idea that there is a constitution above the constitution,

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was developed in Germany's Basic Law through the concept of the eternity clause, Article 79(3), which declares that certain fundamental provisions, including human dignity, the federal structure, and the democratic order, cannot be amended. This concept has since been adopted in various forms in constitutional systems ranging from Brazil to Austria to the Czech Republic and, in judicial doctrine rather than textual provision, in India and Bangladesh itself.

Bangladesh's own basic structure doctrine, as this textbook has documented, emerged from the Supreme Court's Eighth Amendment decision of 1989, which held that judicial review extends even to constitutional amendments that violate the basic structure of the constitution. The court identified several principles as part of the basic structure, including the rule of law, the independence of the judiciary, the democratic character of the state, and the separation of powers. These principles, the court held, are so fundamental to the constitutional order that they cannot be eliminated even by a constitutional majority following the prescribed amendment procedure.

The Bangladesh Supreme Court's basic structure jurisprudence was, for a period, the most important constitutional safeguard against the constitutional subversion that the governing majority of the day might otherwise have accomplished through formal amendment procedures. The Eighth Amendment decision struck down the provision creating six permanent High Court benches outside Dhaka, holding that this provision violated the independence of the judiciary as an element of the basic structure. Subsequent cases elaborated the doctrine and applied it to other constitutional provisions.

However, the basic structure doctrine in Bangladesh has also revealed the limitations that comparative constitutional scholarship has identified in all judicially enforced unamendability: the doctrine is only as strong as the court's willingness and ability to apply it against a determined governing majority. When the Fifteenth Amendment was being prepared, a constitutional revision of such comprehensive scope that it essentially rewrote the constitutional framework that the basic structure doctrine was supposed to protect, the Supreme Court under its then composition did not invoke the basic structure doctrine to strike down the amendment's most constitutionally problematic provisions. Whether this judicial failure reflected a genuine legal assessment that the Fifteenth Amendment did not violate the basic structure, or an institutional failure of judicial courage in the face of an enormously powerful executive, is debated, but the practical consequence was the same: the basic structure doctrine failed to protect the constitutional order from the most serious formal constitutional subversion in Bangladesh's history.

The lesson is not that the basic structure doctrine is useless, but that textually entrenched unamendable provisions would provide stronger protection than judicially defined basic structure principles. Yaniv Roznai's comprehensive study Unconstitutional Constitutional Amendments, published in 2017 and representing the most systematic comparative analysis of this topic, documents the global emergence of textually entrenched constitutional unamendability and identifies the specific provisions that constitutional designers have most frequently chosen to entrench as unamendable. These include the democratic republican form of government, fundamental rights, the independence of the judiciary, the secular character of the state (in

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countries where secularism is a fundamental value), and, in federal systems, the federal structure itself.

For Bangladesh, the constitutional reform process should seriously consider which provisions should be entrenched against amendment through the ordinary constitutional amendment procedure. The candidates are several: the caretaker government system for elections, once established, should perhaps be protected against elimination by a simple parliamentary majority; the independence of the Supreme Court should be protected against subversion through executive control of appointments; and the prohibition on any single individual serving as Prime Minister for more than ten years should be protected against elimination by a future governing majority that finds the term limit inconvenient. The principle of these protections is not that the constitutional order cannot change, but that certain fundamental features of the democratic constitutional framework can only be changed through a more demanding process, specifically a referendum, that ensures the change reflects genuine popular consent rather than the temporary advantage of a parliamentary majority.

Silvia Suteu's 2024 analysis in the Hague Journal on the Rule of Law, Friends or Foes: Is Unamendability the Answer to Democratic Backsliding, addresses the specific question of whether entrenched unamendable provisions can serve as effective safeguards against democratic backsliding. Suteu's conclusion is nuanced: unamendability is neither a panacea nor irrelevant. Entrenched provisions can provide meaningful resistance to constitutional erosion if the institution charged with enforcing them, typically the constitutional court, has genuine independence and the political environment includes sufficient democratic competition to impose costs on governments that attempt to circumvent constitutional constraints. But unamendability alone cannot save a constitutional order in which the court has been captured and in which governing majorities face no effective political opposition. This nuanced conclusion is consistent with the overall thesis of this textbook: that constitutional design is important but not sufficient, and that institutional and cultural conditions of constitutional compliance are equally necessary for constitutional consolidation.

7.2 The Question of a New Constituent Power

The most radical position in Bangladesh's current constitutional debate is that the reform agenda should not proceed through amendment of the existing 1972 constitution, however comprehensive those amendments might be, but through the exercise of a genuine constituent power that produces an entirely new constitutional document. This position, held by some participants in the reform process including elements of the National Citizen Party, rests on the argument that the 1972 constitution, which was created under specific historical conditions that no longer obtain and which has been so thoroughly amended as to no longer represent a coherent constitutional vision, should be replaced by a new constitutional text produced through a genuinely democratic constituent process.

The constituent power argument is theoretically sophisticated. Emmanuel Sieyès, whose concept of the constituent power (pouvoir constituant) was the foundational theory of the French revolutionary constitutional tradition, distinguished between the constituent power, the power of the people to establish a fundamental law, and the constituted powers, the governmental

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institutions that the fundamental law creates. Sieyès argued that the constituent power is unlimited: the people, as the ultimate source of constitutional authority, can choose to establish any form of fundamental law they wish, and this choice cannot be constrained by the existing constituted powers because the constituent power is logically prior to and superior to any constituted power.

The application of this theory to Bangladesh's current situation would suggest that the extraordinary moment of popular mobilisation represented by the July uprising constituted an exercise of constituent power that delegitimised the existing constitutional order and created the political authority to establish an entirely new constitutional framework. On this view, the July Charter's reform agenda is constitutionally inadequate not because its specific proposals are wrong but because it operates within and amends an existing constitutional framework that lacks the legitimacy necessary to provide the foundation for genuine constitutional consolidation.

This position has the theoretical appeal of logical consistency: if the existing constitution is as thoroughly deformed and delegitimised as this textbook's analysis suggests, then arguably the appropriate response is not incremental repair but comprehensive reconstitution. However, the argument from constituent power also has serious practical and theoretical problems. The practical problem is that the exercise of constituent power requires a political process, a constituent assembly or constitutional convention, that has sufficient authority and legitimacy to speak for the people as a whole. Bangladesh currently lacks the institutional machinery for such a process: the NCC process that produced the July Charter was not a constituent assembly in any meaningful sense, and the election of the new parliament, while democratically legitimate, gave the BNP a parliamentary mandate rather than a constituent mandate.

The theoretical problem is that the distinction between constituent power and constituted power, however analytically useful, does not determine the outcomes of constitutional politics. As Emilios Christodoulidis and Roberto Niembro have argued in recent work on constitutional theory, the appeal to constituent power can serve revolutionary democratic purposes or authoritarian purposes with equal facility, and the history of constituent power exercises in practice is considerably less neat than the theory suggests. The Bangladeshi context, in which the constituent power of the July uprising might be invoked to justify constitutional changes that a minority of political actors favour but that have not been subject to broad deliberative review, illustrates this practical danger of the constituent power concept.

The more prudent course, and the one that is consistent both with the referendum result and with the comparative experience of successful constitutional transitions, is to proceed with the comprehensive constitutional amendment process authorised by the referendum while ensuring that the process is as deliberative, inclusive, and principled as possible. The Constitution Reform Council, if constituted in accordance with the referendum mandate, provides the institutional framework within which this amendment process can take place. The 180-day deadline for completing the constitutional amendments is demanding but achievable if there is genuine political will to honour the referendum commitment. And the Supreme Court, if allowed to function with genuine independence, can provide the constitutional oversight of the amendment process that the basic structure doctrine requires.

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CHAPTER EIGHT: THE ROLE OF INTERNATIONAL LAW AND COMPARATIVE CONSTITUTIONALISM IN BANGLADESH'S REFORM PROCESS

8.1 Constitutional Borrowing and Its Methodological Challenges

Bangladesh's constitutional reform process, like every modern constitutional drafting or amendment exercise, is necessarily a process of comparative constitutional borrowing: looking to the constitutional experience of other countries for models, precedents, and warnings. The scholarly literature on constitutional borrowing is extensive and increasingly sophisticated, with important contributions from scholars including Sujit Choudhry, who has developed the concept of migration of constitutional ideas, and Dixon and Landau, whose work on abusive constitutional borrowing (cited earlier in this chapter in a different context) addresses the specific risks of comparative learning.

The methodological challenges of constitutional borrowing are considerable. Constitutional provisions that work well in one political, social, and institutional context may produce entirely different outcomes when transplanted to a different context. The anti-defection provision that Bangladesh borrowed from India, Article 70 corresponding to India's Tenth Schedule, produced different outcomes in the two countries in part because the broader constitutional context, the specific political culture, and the institutional complement of each provision were different. Bangladesh's more restrictive version of the anti-defection provision, combined with the absence of effective horizontal accountability mechanisms, produced a far more damaging concentration of parliamentary power than India's version in India's constitutional context.

The lesson of this methodological challenge is not that comparative learning is useless but that it must be contextualised: the question is not simply what provision works in the model country but what provision is likely to work in Bangladesh's specific institutional and political context, given the specific pathologies that have characterised Bangladesh's constitutional history and the specific institutional capacities and political culture that Bangladesh possesses. This is precisely the kind of contextualised comparative analysis that the Constitution Reform Commission's report attempted to provide, though with varying degrees of success for different provisions.

International IDEA's Constitution Building Programme, which provided technical assistance to Bangladesh's reform process through its support for the National Consensus Commission, brings substantial comparative expertise to this challenge. IDEA's Constitutionnet database, which documents constitutional provisions and experiences across more than 190 countries, and its methodological guidelines for constitution-building processes, provide systematic comparative information that constitutional designers can use to inform their choices. The constitutionnet.org pieces cited in this chapter's bibliography illustrate the kind of engaged comparative analysis that informed outside observers can contribute to a constitutional reform process, and Bangladesh's reform process has benefited from this international technical assistance even if the political dynamics of the NCC process constrained how fully that expertise could be incorporated.

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The specific comparative models most relevant to Bangladesh's reform priorities have been identified throughout this chapter: South Africa on judicial independence and social rights, Germany on constitutional entrenchment and the basic structure doctrine, Colombia on the tutela and social rights justiciability, India on anti-defection and electoral system, Indonesia on post-authoritarian transition, and Spain on transitional accountability. Each of these models offers specific lessons that are applicable to Bangladesh's reform agenda, subject to the methodological caution of contextualisation.

8.2 International Human Rights Standards as Constitutional Benchmarks

The international human rights law framework that Part Eleven of this textbook examined in detail serves not merely as a source of Bangladesh's external legal obligations but as a set of substantive benchmarks against which the constitutional reform agenda can be evaluated. The ICCPR, the ICESCR, CEDAW, the CRC, and the other core human rights treaties to which Bangladesh is a party establish minimum standards for the protection of civil, political, economic, social, and cultural rights that the reformed constitutional framework should at minimum meet and ideally exceed.

Several dimensions of the human rights standard are particularly relevant to the reform agenda's specific proposals. The ICCPR's Article 25, which protects the right to participate in public affairs and to vote in genuine periodic elections, is directly relevant to the electoral system reforms and the caretaker government proposals. The Human Rights Committee's General Comment 25 on Article 25 provides detailed guidance on what constitutes a genuinely free and fair election under international law, including requirements for voter registration, campaign freedom, media access, and electoral administration independence that go beyond what Bangladesh's existing legal framework guarantees. The reformed constitutional framework should be designed to meet these international standards, not merely as an external compliance obligation but as a substantive benchmark for evaluating the adequacy of the electoral reform proposals.

CEDAW's comprehensive framework for women's equality, which requires not merely formal legal equality but substantive transformation of the conditions that produce gender inequality, provides the most ambitious international standard for evaluating the gender equality provisions of the constitutional reform. Bangladesh's outstanding CEDAW reservations, particularly to Articles 2 and 16(1)(c), which relate to the obligations of states parties to take appropriate measures to modify the social and cultural patterns that produce gender discrimination and to ensure equal rights in respect of personal status and family relations, represent a gap between Bangladesh's constitutional commitment to gender equality and its willingness to honour the full implications of that commitment. The constitutional reform process should make withdrawal of these reservations a priority, not merely as a treaty compliance measure but as an expression of Bangladesh's genuine commitment to substantive rather than merely formal gender equality.

The international standards on judicial independence, contained in the UN Basic Principles on the Independence of the Judiciary adopted by the General Assembly in 1985 and developed in subsequent soft law instruments including the Bangalore Principles of Judicial Conduct, provide detailed guidance on what genuine judicial independence requires in terms of appointment

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procedures, tenure protection, financial autonomy, and immunity from political pressure. Bangladesh's reform proposals for the judicial appointment process should be evaluated against these international standards, with attention to whether the proposed mechanisms genuinely insulate the appointment process from partisan influence or merely create additional procedural steps that a determined governing majority can control.

8.3 The Bangladesh Model as a Contribution to Global Constitutional Knowledge

It would be a mistake to approach the study of Bangladesh's constitutional experience purely as a story of failure from which other countries can learn cautionary lessons. Bangladesh's constitutional history, for all its pathologies, has also produced insights and experiences that are genuinely valuable contributions to the global body of constitutional knowledge.

The basic structure doctrine that Bangladesh's Supreme Court developed in 1989, building on the Indian precedent but adapted to the specific features of Bangladesh's constitutional order, is a meaningful contribution to the jurisprudence of constitutional entrenchment that has been recognised in comparative constitutional scholarship. The doctrine's development in Bangladesh demonstrates that post-colonial constitutional courts in developing countries can develop sophisticated constitutional jurisprudence independently rather than merely borrowing from established constitutional systems, and this demonstration itself has value for the broader comparative constitutional enterprise.

The CHT Accord of 1997, imperfectly implemented as it has been, remains one of the few negotiated political settlements of an indigenous rights conflict in South Asia, and the constitutional questions it raises about the relationship between territorial autonomy, indigenous rights, and national constitutional frameworks are questions that many other countries face. Bangladesh's experience with the Accord, including its implementation failures, provides lessons for other post-conflict settings in which constitutional frameworks for managing indigenous peoples' self-governance claims are being designed.

The July uprising of 2024 itself is a contribution to the global body of knowledge about how democratic mobilisation can reverse authoritarian trajectories without international military intervention and without the prolonged civil conflict that has characterised other transitions from authoritarianism. The specific mechanisms through which the uprising succeeded, including the role of student leadership, social media coordination, the defection of security forces from the regime's defence, and the ultimate institutional response of the army's refusal to continue suppressing protests, deserve systematic study as a model of what scholars call negotiated transition from within, a form of democratic transition that is more common in the contemporary world than either revolution or elite pact.

Bangladesh's constitutional reform process, and its relationship to the July uprising that produced the political conditions for reform, is itself a contribution to the constitutional transitions literature. The specific challenges that Bangladesh faces in the post-referendum period, including the governing party's reluctance to honour referendum commitments, the litigation-driven uncertainty about constitutional implementation, and the structural political economy pressures against genuine institutional independence, are challenges that other countries in similar

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transitions face and that the careful documentation and analysis of Bangladesh's experience can help to illuminate.

CHAPTER NINE: THE RIGHTS OF THE GOVERNED AND THE OBLIGATIONS OF THE GOVERNORS: TOWARD A CONSTITUTIONALISM OF ACCOUNTABILITY

9.1 Accountability as the Core Constitutional Value

Throughout the analytical framework developed in this textbook, accountability has emerged as the central constitutional value, the value without which all other constitutional commitments become nominal rather than real. The protection of rights without accountability mechanisms for rights violations is meaningless. The separation of powers without accountability for abuses of separated power is an institutional fiction. The independence of the judiciary without accountability for judicial corruption and incompetence is a protection for judicial privilege rather than for the people the judiciary is supposed to serve. Electoral democracy without accountability for electoral manipulation is a mechanism for legitimating the exercise of power rather than for controlling it.

Accountability, in its full constitutional sense, encompasses multiple dimensions that the comparative constitutional literature has developed in considerable detail. Vertical accountability is the downward accountability of governors to the governed through electoral processes: the ability of citizens to remove governments that have failed to honour their constitutional commitments and to replace them with governments that promise better constitutional compliance. Horizontal accountability is the mutual accountability among governmental institutions through the mechanisms of separation of powers and checks and balances. Social accountability is the accountability of governmental institutions to civil society actors, including the media, NGOs, professional associations, and other non-governmental organisations that monitor governmental performance and mobilise public pressure for compliance. And, in the international law dimension developed in Part Eleven, supranational accountability is the accountability of states to international legal obligations enforced through international courts, treaty bodies, and diplomatic pressure.

Bangladesh's constitutional pathologies, as documented throughout this textbook, can all be understood as failures of one or more of these accountability dimensions. The Hasina government's trajectory toward authoritarianism reflected a systematic dismantling of vertical accountability through electoral manipulation, of horizontal accountability through judicial subordination and parliamentary capture, and of social accountability through the Digital Security Act's chilling effect on media and civil society. The military regimes of earlier periods represented the ultimate failure of vertical accountability, the direct elimination of electoral processes. Even the relatively democratic periods of Bangladesh's constitutional history have been characterised by weak horizontal and social accountability, producing governance outcomes that, while not authoritarian in the full sense, consistently failed to honour the constitutional commitments of rights protection, institutional independence, and the rule of law.

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The constitutional reform agenda's primary contribution is its attempt to rebuild the institutional infrastructure of accountability across all four dimensions. The caretaker government provisions address vertical accountability by protecting the electoral process from governmental manipulation. The judicial independence reforms, the upper house, and the enhanced presidential powers address horizontal accountability by creating institutional counterweights to parliamentary majority dominance. The Human Rights Commission reforms and the independent media provisions address social accountability. And the international law provisions discussed in Part Eleven address supranational accountability.

Whether these accountability reforms are sufficient, and whether they will be implemented with the genuine fidelity to their purposes that constitutional consolidation requires, remains the central question for Bangladesh's constitutional future. The analysis developed in this textbook suggests that the answer to this question will be determined not primarily by the quality of the constitutional text, which, while imperfect, contains much that is genuinely reforming, but by the political choices of the governing party in the months and years ahead, the institutional courage of the Supreme Court in enforcing constitutional constraints, and the sustained engagement of civil society in demanding constitutional accountability from those who govern in the name of the people.

9.2 The Constitutional Compact and Its Renewal

A useful way of understanding what Bangladesh's constitutional transition requires is through the concept of the constitutional compact, the idea that a constitution is not merely a legal document but a mutual commitment among the members of a political community about the terms on which they will live together under a common government. The compact concept draws on the social contract tradition developed by Locke, Rousseau, and Rawls, but it emphasises the ongoing, relational character of constitutional commitment rather than the single founding moment of social contract theory.

A constitutional compact has content, which the constitutional text expresses and which the constitutional tradition interprets; it has parties, the members of the political community who are bound by and benefit from its provisions; and it has conditions, the circumstances under which the compact remains in force and the consequences that follow from its breach. Bangladesh's constitutional compact has been repeatedly breached by its governments, and the July uprising was the most dramatic recent assertion by the governed that the compact had been so fundamentally violated that a renegotiation, or a constitutional renewal, was necessary.

The constitutional reform process initiated by the interim government and culminating in the February 2026 referendum represents an attempt at constitutional compact renewal: a renegotiation of the terms on which Bangladeshis will live together under a common government, incorporating the lessons of the compact's previous breaches and establishing new institutional mechanisms to prevent or remedy future breaches. Whether this renewal will succeed depends, as this textbook has argued throughout, on whether all parties to the compact, including the governing BNP and the opposition parties, are genuinely committed to its terms or merely to the political advantages that appear to endorse constitutional commitments while planning to undermine them.

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The constitutional compact concept also has implications for the excluded parties, particularly those who declined to sign the July Charter or who were excluded from the NCC process. A constitutional renewal that excludes significant members of the political community is necessarily incomplete, because excluded parties have neither the sense of ownership that generates genuine compliance nor the procedural standing that makes their objections legitimate. Bangladesh's post-election constitutional politics, in which the banned Awami League's eventual reintegration into the constitutional order remains unresolved, the second-wave reform commissions' recommendations remain unimplemented, and the indigenous peoples' constitutional demands remain largely unaddressed, reflects this incompleteness. A genuine constitutional compact renewal would need to address these gaps, even if doing so requires difficult political negotiations with parties and communities whose positions are uncomfortable or whose past conduct has generated legitimate grievances.

9.3 The People as Constitutional Actors

The deepest insight of the July uprising, and the insight that is most important for understanding Bangladesh's constitutional future, is the demonstrated reality that the people are constitutional actors, not merely passive recipients of constitutional arrangements made by their governors. The student protesters who challenged Sheikh Hasina's government, who risked and in many cases gave their lives in the assertion of democratic rights, were not acting as clients of the political system or as subjects of the constitutional order. They were acting as citizens in the most demanding sense, as members of a constitutional community who recognised that their constitutional rights had been violated and who asserted, at enormous personal cost, that the constitutional compact could not be indefinitely breached without response.

This vision of the people as constitutional actors, which has deep roots in the democratic theory of Rousseau, Jefferson, Ackerman, and Frank Michelman, among others, is profoundly important for understanding what constitutional consolidation in Bangladesh requires. Constitutional consolidation is not something that governments do to or for the people: it is something that the people, the government, civil society, and international partners do together, through the sustained practice of constitutional democracy. The people's role in this practice is not limited to voting in elections or acquiescing in constitutional arrangements made by others. It includes the ongoing monitoring of governmental compliance with constitutional commitments, the assertion of constitutional rights through litigation and public advocacy, the resistance to constitutional violation through peaceful mobilisation, and the exercise of what Ackerman calls constitutional politics in moments of extraordinary popular engagement with fundamental constitutional questions.

Bangladesh's citizens have demonstrated, through the July uprising and through the referendum result, that they are capable of this constitutional citizenship. The challenge for the constitutional reform process is to create and sustain the institutional conditions that allow this constitutional citizenship to continue to be exercised effectively after the extraordinary moment of popular mobilisation has passed and the routine of normal democratic politics reasserts itself. Independent courts that are accessible to rights claimants without financial barriers, a free media that can report on constitutional developments without fear of prosecution, civil society organisations that can monitor governmental compliance without administrative harassment, and

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an electoral system that genuinely translates popular preferences into governmental power are the institutional foundations that effective constitutional citizenship requires.

CHAPTER TEN: CONCLUSION AND THE LONG CONSTITUTIONAL ARC

10.1 The Arc of Bangladesh's Constitutional History

Bangladesh's constitutional history, from the founding moment of 1972 to the constitutional threshold of 2026, describes an arc that is not simply a story of failure or a story of progress but something more complex and more instructive than either: a story of genuine aspiration, systematic betrayal, periodic democratic vitality, structural reinforcement of authoritarian tendencies, and finally, perhaps, an opportunity for something genuinely different.

The 1972 constitution was a remarkable founding document, born of the fire of liberation and animated by the authentic democratic and humanist aspirations of a people who had paid an extraordinary price for their freedom. Its foundational commitments to democracy, socialism, secularism, and nationalism, however contestable their specific meanings, expressed a genuine vision of a just and free society that the drafters honestly believed could be made real through constitutional governance. The speed of the constitution's drafting, the limitations of the deliberative process, and the structural choices that concentrated power in the executive without adequate institutional counterweights, are genuine criticisms of the founding document. But they do not diminish the sincerity of the founding aspiration.

What followed was a story of constitutional betrayal that is distressing precisely because it was not inevitable. The Fourth Amendment, which abolished parliamentary government and created a one-party state, was not a response to any genuine constitutional necessity: it was a choice made by a political leader who had allowed his democratic mandate to become confused with a personal claim to unlimited authority. The subsequent martial law periods, the constitutional laundering of authoritarian interruptions, the Eighth Amendment's introduction of Islam as the state religion, the Fifteenth Amendment's elimination of the caretaker government and its concentration of power in the Prime Minister's office, the Digital Security Act's criminalisation of political speech, and finally the election manipulations of 2014 and 2018 that eliminated meaningful political competition, all represent choices made by political actors who preferred their own power to the constitutional order they were sworn to defend.

The July uprising was an assertion that the people of Bangladesh were not willing to accept indefinite constitutional betrayal. Its extraordinary breadth and depth, encompassing students, professionals, workers, and ordinary citizens across generational, class, and regional lines, demonstrated that the aspiration to constitutional governance that animated the 1972 founding was not extinguished by decades of constitutional failure. The uprising's success, in ending the Hasina government and creating political space for constitutional reform, was itself a constitutional achievement, a dramatic exercise of what Ackerman would call higher lawmaking through popular mobilisation.

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The constitutional reform process that followed, however imperfect, is a serious attempt to learn from Bangladesh's constitutional history and to create the institutional conditions for constitutional consolidation. The July Charter, with all its limitations, represents the most comprehensive negotiated reform agenda in Bangladesh's constitutional history. The referendum, with all its procedural ambiguities, provided a genuine popular endorsement of constitutional reform. And the post-election uncertainty, while genuinely troubling, is not yet the definitive failure of the reform process: it is the first test of whether the political commitment to constitutional reform expressed in the campaign and the referendum will be maintained in the more difficult environment of governing.

10.2 Martin Luther King and the Constitutional Long Game

In his Letter from Birmingham Jail, the American civil rights leader Martin Luther King Jr. wrote that the arc of the moral universe is long, but it bends toward justice. King was writing in the context of a struggle for constitutional equality that had already lasted for decades and would last for decades more before producing anything approaching its goal. But the insight he expressed, that constitutional progress is a long-term project that requires sustained commitment across generations, is one that is universally applicable to constitutional struggles.

Bangladesh's constitutional arc is long, and it bends in directions that are not always toward justice. But the bend of the arc is not predetermined. It is shaped, at every moment, by the choices of political leaders who can honour or betray their constitutional commitments, by the courage of judges who can enforce or evade constitutional principles, by the vigilance of civil society actors who can monitor or ignore constitutional compliance, and above all by the will of the people who can, as the July uprising demonstrated, assert their constitutional rights against even a determined authoritarian when the violation of those rights becomes intolerable.

The July uprising, and the constitutional reform process it generated, has created a genuine opportunity to bend Bangladesh's constitutional arc toward justice more decisively than at any previous moment in the country's history. Whether that opportunity will be seized depends on choices that are being made now, in the weeks and months following the February 2026 election, as the new government determines how seriously it will honour the constitutional commitments it made to the people. These choices are among the most consequential in Bangladesh's history, and they deserve the most sustained and critical engagement from every actor, domestic and international, who cares about Bangladesh's constitutional future.

SELECTED BIBLIOGRAPHY AND FURTHER READING FOR PART TWELVE

The bibliography for this final part necessarily ranges across the full spectrum of constitutional theory, comparative constitutional law, political science, and Bangladesh-specific scholarship. The following represent the most essential works for each of the major themes addressed in this part.

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On constitutional consolidation theory, Juan Linz and Alfred Stepan's Problems of Democratic Transition and Consolidation remains the foundational text. Larry Diamond's more recent work, including his 2019 book Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency, updates the consolidation literature for the contemporary era of democratic backsliding. Aziz Huq and Tom Ginsburg's How to Lose a Constitutional Democracy, published in the UCLA Law Review in 2018, is essential reading for understanding constitutional retrogression. Edoardo Grillo and colleagues' Theories of Democratic Backsliding, in the Annual Review of Political Science Volume 27 of 2024, provides the most current systematic review of the backsliding literature.

On comparative constitutional transitions, Nelson Mandela's Long Walk to Freedom remains essential reading for understanding the South African constitutional transition from the perspective of its central figure. Heinz Klug's scholarly analysis in Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction provides the systematic constitutional law perspective. For Colombia, Manuel Jose Cepeda-Espinosa's work on the Colombian Constitutional Court and social rights is authoritative. For Indonesia, Marcus Mietzner's analyses of the post-Reformasi political dynamics are essential comparative reading. On Spain's transition, Omar Encarnacion's Spanish Politics: Democracy after Dictatorship provides a recent and comprehensive account.

On Bangladesh's specific constitutional developments in 2024 to 2026, the most current and comprehensive analysis is available through International IDEA's Constitutionnet platform, specifically the December 2025 analysis by Muhammad Ekramul Haque and Sumit Bisarya on the July Charter and Constitutional Reforms in Bangladesh, and the March 2026 analysis on Bangladesh's Referendum and Reforms: The Need to Return to a Constitutional Process. The Daily Star's constitutional commentary in early 2026, including the February 21 piece on the referendum mandate, provides essential contemporaneous analysis of the post-referendum constitutional crisis. Al Jazeera's February 2026 reporting on the BNP's refusal to take the Council oath provides detailed factual documentation of the immediate post-election crisis.

On constitutional theory and unamendability, Yaniv Roznai's Unconstitutional Constitutional Amendments: The Limits of Amendment Powers, published by Oxford University Press in 2017, is the definitive comparative analysis. Silvia Suteu's Friends or Foes: Is Unamendability the Answer to Democratic Backsliding, published in the Hague Journal on the Rule of Law in 2024, provides the most current analysis of unamendability as a constitutional safeguard. Jan Petrov's How to Detect Abusive Constitutional Practices, published in the European Constitutional Law Review Volume 20 of 2024, develops the methodological framework for identifying constitutional abuse.

On gender and constitutional equality, Martha Albertson Fineman's The Autonomy Myth and Sandra Fredman's Women and the Law provide the theoretical frameworks for substantive gender equality. Catherine Mackinnon's more recent work on the relationship between constitutional equality and gender-based violence is directly relevant to Bangladesh's unresolved gender equality challenges. For the specific context of women's parliamentary representation, Drude Dahlerup's edited collection Women, Quotas and Politics provides comprehensive comparative analysis of reservation systems and their effectiveness.

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On indigenous rights and constitutional pluralism, Will Kymlicka's Multicultural Citizenship remains the foundational liberal theory of minority rights. For the specific context of the Chittagong Hill Tracts, Raja Devasish Roy's extensive scholarship on CHT governance, customary law, and the CHT Accord provides authoritative primary source analysis from one of the region's own legal scholars and community leaders. The UN Permanent Forum on Indigenous Issues' documentation of Bangladesh's compliance with indigenous rights obligations provides essential international monitoring perspective.

On political economy and constitutional failure, Daron Acemoglu and James Robinson's Why Nations Fail provides the foundational comparative framework. Mushtaq Khan's work on political settlements and governance in Bangladesh, including his analysis of the political economy of the garment industry and its constitutional implications, provides the most sophisticated Bangladesh-specific political economy analysis. The Bangladesh Institute of Development Studies' ongoing research on governance and institutional quality provides essential empirical data.

On accountability and constitutional democracy, John Ferejohn's Accountability and Authority: Toward a Theory of Political Accountability and the chapters in Schedler, Diamond and Plattner's edited volume The Self-Restraining State: Power and Accountability in New Democracies provide the essential theoretical framework. For the specific international law dimension of accountability, Part Eleven's bibliography, which includes the ICC documentation, Amnesty International's Human Rights Charter submission, and the UN Human Rights Committee's Concluding Observations on Bangladesh, remains directly relevant.

Finally, for students who wish to engage with the philosophical foundations of the arguments developed throughout this textbook, the most essential works are John Rawls's A Theory of Justice and Political Liberalism for the social contract tradition, Jurgen Habermas's Between Facts and Norms for the deliberative democracy tradition, Ronald Dworkin's Law's Empire and Taking Rights Seriously for the rights-based liberalism tradition, and Roberto Unger's The Critical Legal Studies Movement and his subsequent work on institutional imagination for the most radical critique of constitutional formalism and the most ambitious vision of constitutional transformation. Each of these philosophical frameworks offers a different perspective on the central questions that Bangladesh's constitutional struggle poses, and engaging seriously with all of them is the best preparation for the constitutional thinking that Bangladesh's continuing constitutional development will require.

AFTERWORD: A NOTE ON CONSTITUTIONAL HOPE

This textbook has been written in the conviction that careful, critical analysis of constitutional experience, however painful that experience may be, is itself a form of constitutional commitment. To take Bangladesh's constitutional history seriously, to examine its failures honestly, to understand the structural conditions that produced those failures, and to assess the prospects for genuine reform with neither naive optimism nor premature despair, is to treat the people of Bangladesh and their constitutional struggle with the respect they deserve.

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Constitutional democracy is not, as its critics sometimes suggest, merely a set of institutional arrangements that powerful states impose on weaker ones or that ruling elites use to legitimate their dominance. It is, at its best, a genuine human achievement: a way of organising political life that allows people to live together under common rules while protecting the equal dignity and rights of every member of the community. That achievement is fragile, incomplete, and perpetually contested. But it is real, and the aspiration to it, as expressed in Bangladesh's July uprising and in the long history of democratic mobilisation that preceded it, is one of the most powerful and durable forces in human political life.

The constitutional future of Bangladesh is, at the time of this writing in April 2026, genuinely uncertain. The reform process is incomplete, the political commitment of the governing party to its constitutional obligations is in question, and the structural conditions that have produced constitutional failure in the past have not been fundamentally transformed. But the people of Bangladesh have demonstrated, with unmistakable clarity, that they will not permanently accept constitutional betrayal. That demonstration is itself the most important constitutional resource Bangladesh possesses, and it is the foundation on which, with sufficient institutional wisdom, political courage, and sustained democratic commitment, a genuinely constitutional republic can eventually be built.

End of Part Twelve

Constitutional Pathologies and Popular Sovereignty: Bangladesh's Journey from the 1972 Founding to the July Charter by S M Nazmuz Sakib is published as a twelve-part textbook examining the foundational philosophy, political history, institutional architecture, rights framework, judicial structure, electoral system, political economy, international law dimensions, and constitutional future of the Constitution of Bangladesh. The analysis draws on comparative constitutional law, political theory, jurisprudential philosophy, and detailed historical investigation, and is intended for law students, legal practitioners, constitutional scholars, and engaged citizens committed to understanding and participating in Bangladesh's continuing constitutional development.

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Summary

At a critical juncture in Bangladesh's constitutional history, *Constitutional Commentaries* offers a rigorous and timely exploration of law, governance, and democratic transformation. This work examines the evolving nature of constitutional interpretation and jurisprudence in light of the country's most significant constitutional moments.

Grounded in doctrinal analysis and enriched by historical context, the book traces how constitutional principles have been shaped, contested, and reimagined over time. It engages with key themes such as judicial reasoning, separation of powers, fundamental rights, and the enduring tension between legal continuity and political change.

With particular attention to the constitutional moment "shaped by recent civic movements, this volume situates legal scholarship within a broader narrative of struggle, reform, and aspiration. It invites readers to consider the constitution not as a static document, but as a Living framework that reflects the will, resilience, and evolving identity of the people.

About the Author

S M Nazmuz Sakib is an interdisciplinary scholar, researcher, and author bridging IT, business analytics, and applied research. He is a Fellow of the Scholars Academic and Scientific Society, a Member of IAENG, a lifetime member of BELTA, and a Bangladeshi Arena Grand Master recognized by FIDE. His credentials across AWS, Google and SAS analytics, UX, project management, digital marketing, and finance. He has published peer-reviewed articles and book chapters with Springer Nature, CRC Press/Taylor and Francis, and IGI Global.

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